No. 16-3076

No. 16-3570

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NOVELIS CORPORATION, Petitioner – Cross-Respondent,

JOHN TESORIERO, MICHAEL MALONE,
RICHARD FARRANDS, AND ANDREW DUSCHEN, Intervenors,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent – Cross-Petitioner,

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO, CLC, Intervenor.

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT OF A DECISION OF THE NATIONAL LABOR RELATIONS BOARD

DEFERRED APPENDIX VOLUME VI (A-1302 – A-1551)

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
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NOVELIS CORPORATION

and

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NOVELIS CORPORATION
Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO
Petitioner

Case 03-RC-120447

ALJ
Exh. No: 2a Received ✓ Rejected
Case No.: 03-CA-121293 et al
Case Name: Novelis Corp
No. Pgs: Date: 9-8-14 Rep.:

ORDER GRANTING THE GENERAL COUNSEL'S MOTION TO AUTHENTICATE UNION AUTHORIZATION CARDS

The General Counsel moves for an order pursuant to Section 102.24 of the Board's Rules and Regulations requesting that I determine the authenticity of approximately 80 authorization cards based on signature comparisons with employees' signature on certain subpoenaed employment documents. Novellis Corporation (the Respondent) replied that such an approach is improper because (1) the cards at issue have not been identified, (2) significant differences in signatures appearing on the authorization cards improperly place me in the role of becoming a handwriting expert and, (3) as a result, such an approach may cause a waste of time and judicial resources, and potentially limit Respondent's ability to conduct cross-examination. Finally, should the motion be granted, Respondent reserves its right to dispute any cards sought to be authenticated in this manner.

The administrative law judge, as trier of fact, may authenticate an authorization card by comparing the card signature with an authenticated specimen. *Traction Wholesale Center Co. v. NLRB*, 328 NLRB 1058, 1059–1060 (1999), enfd. 216 F.3d 92, 105 (D.C. Cir. 2000), citing *Action Auto Stores*, 298 NLRB 875, 879 (1990), enfd. mem. 951 F.2d 349 (6th Cir. 1991); *Ken's IGA*, 259 NLRB 305 fn. 2 (1981), modified on other grounds 697 F.2d 798 (7th Cir. 1983).

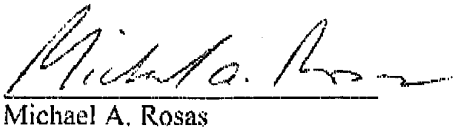
Furthermore, the administrative law judge is permitted to treat employee-signed documents subpoenaed from a respondent's personnel files as being genuine specimens for purposes of comparison with authorization card signatures. *Traction Wholesale Center Co. v. NLRB, 328 NLRB at 1059, citing* Aero Corp., 149 NLRB 1283, 1287 (1964), enfd. 363 F.2d 702 (D.C. Cir. 1966); Heck's Inc., 166 NLRB 186 fn. 1 (1967), enfd. sub nom. NLRB v. Gissel Packing Co., 395 U.S. 575 (1969).

In accordance with Federal Rule of Evidence 901(b)(3), the administrative law judge will determine the genuineness of signatures on authorization cards by comparing them to documentary evidence obtained from the Respondent's personnel records. *Acme Bus Corp.*, 357 NLRB No. 82, slip op. at 30 (2011) (citing *Parts Depot, Inc.*, 332 NLRB 670, 674 (2000), enfd. 24 Fed. Appx. 1 (D.C. Cir. 2001)). See also *Homer D. Bronson Co.*, 349 NLRB 512 (2007) (authentication by comparing employees' signatures on a union petition based on comparisons to employment documents); *Sanitation Salvage Corporation*, 342 NLRB 449, 455 (2004) (authentication by comparing agent's signature on a disputed 'me-too" agreement to another company record).

The General Counsel refers to the authenticated specimens as I-9 forms produced by Respondent on July 23, 2014, but not yet received in evidence. Nevertheless, should the I-9 forms be received in evidence, they will be compared by the trier-of-fact to the authorization card signatures. The Respondent will have the right to challenge such comparisons through a handwriting expert or witnesses with knowledge to the contrary. This procedure, rather than requiring the General Counsel to call an estimated 80 witnesses, would be a more efficient approach in determining the authentication of the estimated 80 authorization card signatures.

Based on the foregoing, it is ORDERED, that the General Counsel's motion to authenticate union authorization cards by comparing the signatures thereon with signatures contained in documentary evidence consisting of Respondent's authenticated personnel records is granted.

Dated, Washington, D.C. September 4, 2014



Michael A. Rosas
Administrative Law Judge

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

ALJ
Exh. No: 2e Received ✓ Rejected
Case No.: 03-CA-121293 et al
Case Name: Novelis Corp
No. Pgs: Date: 9-8-14 Rep.: Am

NOVELIS CORPORATION		
and	**Cases**	**03-CA-121293** **03-CA-121579** **03-CA-122766** **03-CA-123346** **03-CA-123526** **03-CA-127024** **03-CA-126738**
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO		
NOVELIS CORPORATION **Employer**		
and		
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO **Petitioner**	**Case**	**03-RC-120447**

Counsel for the General Counsel's Motion For Authentication Of Union Authorization Cards

Counsel for the General Counsel (General Counsel), pursuant to Section 102.24 of the Board's Rules and Regulations (Rules), moves Administrative Law Judge Rosas (Judge Rosas) to determine the authenticity of approximately 80 authorization cards based on signature comparisons.

Established Board law holds that an administrative law judge, consistent with Federal Rule of Evidence 901(b)(3), "may determine the genuineness of signatures on authorization cards by comparing them to W–4 forms in the employer's records" or other employment documents. Acme Bus Corp., 357 NLRB No. 82, slip op. at 30 (2011) (citing Parts Depot, Inc., 332 NLRB 670, 674 (2000), enfd. 24 Fed. Appx. 1 (D.C. Cir. 2001)); Homer D. Bronson Co., 349 NLRB 512 (2007)(administrative law judge determined the authenticity of employees' signatures on a union petition based on comparisons to employment documents); Traction Wholesale Center Co. v. NLRB, 328 NLRB 1058, 1059–1060 (1999) (authorization cards) enfd. 216 F.3d 92, 105 (D.C. Cir. 2000); Justak

Bros., 253 NLRB 1054, 1079 (1981), enfd. 664 F.2d 1074 (7th Cir. 1981) (administrative law judge determined cards authenticity by comparing signatures on the authorization cards to employment documents). The documents subpoenaed from the employees' personnel files are deemed genuine specimens for comparing with the authorization cards. Traction Wholesale Center Co. v. NLRB, 328 NLRB 1058, 1059–1060 (1999) enfd. 216 F.3d 92, 105 (D.C. Cir. 2000)(citing for support Aero Corp., 149 NLRB 1283, 1287 (1964), enfd. 363 F.2d 702 (D.C. Cir. 1966) and Heck's Inc., 166 NLRB 186 fn. 1 (1967), enfd. sub nom.).

On this basis, the General Counsel respectfully requests Judge Rosas to compare the employees' signature on their employment documents, I-9 forms,[1] with their signatures on the authorization cards to determine their authenticity. Absent Judge Rosas' determining the authenticity of the authorization cards, the General Counsel will be required to obtain a handwriting expert, which requires providing notice to Respondent, or subpoena approximately 80 employees so that they can authenticate their signatures on their authorization cards. Accordingly, as the General Counsel must be prepared to obtained admission of the authorization cards by these alternative routes, if necessary, it is respectfully requested that Judge Rosas provide an expeditious determination on this motion.

[1] Respondent produced the I-9 forms on July 23, 2014, the last day scheduled for that segment of the scheduled hearing dates. Counsel for the General Counsel will explore a stipulation with Respondent concerning the admission of the I-9 forms into the record, barring admission by stipulation; Counsel for the General Counsel intends to call a Respondent record's witness, who is currently under subpoena, to obtain admission of the I-9 forms.

DATED at Buffalo, New York this
20th day of August 19, 2014

Respectfully submitted,

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STATEMENT OF SERVICE

I hereby certify that on August 20, 2014, the General Counsel's Motion was filed with the Honorable Administrative Law Judge Michael A. Rosas by electronic mail and served in the manner indicated below.

Via Electronic mail

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Charging Party-

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Intervenors-

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DATED at Buffalo, New York this
20th day of August 19, 2014

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NOVELIS CORPORATION

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

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NOVELIS CORPORATION
Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO
Petitioner

Case 03-RC-120447

ORDER GRANTING MOTION BY COUNSEL FOR GENERAL COUNSEL AND CHARGING PARTY TO PRECLUDE EVIDENCE REGARDING SUPERVISORY STATUS OF EVERETT ABARE

A. The Motion and Opposing Arguments

Counsel for the General Counsel (General Counsel) and the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL-CIO (Charging Party) moved during the hearing on October 3, 2014 for an order precluding the Novelis Corporation (the Respondent) from asserting an affirmative defense that Everett Abare is a statutory supervisor pursuant to Section 2(11) of the Act.

The General Counsel and Charging Party contend that Respondent waived such an affirmative defense through its course of conduct in both the current and related proceedings, during which Respondent at no point distinguished the status of Abare from other employees. Specifically, they base their motions on the grounds that the Respondent: (1) did not raise such a defense in its answer to the complaint and permitting Respondent to litigate Abare's supervisory status now, after the conclusion of the General Counsel's direct case and after Respondent has already presented a significant number of witnesses, would be unfairly prejudicial to the General Counsel and Charging Party, (2) is barred from raising such a defense because it stipulated to Abare's inclusion in the bargaining unit in Case 03-RC-120447 and included his name on the Excelsior list that it provided to the Board in connection with that

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election,[1] and (3) never took the position that Abare was a supervisor during the investigation of the unfair labor practice charges or during the proceeding for injunctive relief before the U.S. District Court for the Northern District of New York.

The Respondent contends that the issue of whether Abare was a statutory supervisor under Section 2(11) of the Act is relevant because: (1) it would insulate the Company from liability under Section 8(a)(3) of the Act for demoting him; and (2) the union authorization cards Abare solicited would be invalid under *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004) and, thus, may not be considered in determining whether the Union established majority support.

Notwithstanding the assertion that supervisory capacity is a relevant defense, the Respondent's contends that such capacity need not be pled with respect to a discriminatee alleging a Section 8(a)(3) charge violation or a union card solicitor in a case where a *Gissel* bargaining order is sought. Respondent argues that it has been developing such a defense under *Harborside Healthcare, Inc.* and Abare's status as a supervisor is no different as an evidentiary matter than any other component. Furthermore, the failure of the General Counsel and Charging Party to recognize the potential invocation of this defense does not constitute waiver on the part of the Respondent.

Alternatively, the Respondent contends that its first, third, and eight affirmative defenses preserved its ability to challenge Abare's alleged supervisory status. Notwithstanding its statement in the amended answer that it demoted "employee" Abare, it denies "waiving" its right to elicit evidence of Abare's supervisory status based on the additional statement that it did not take adverse action against any "employee under the Act." The Respondent also denies that it waived, or is estopped for that matter, from raising Abare's supervisory status based on its pre-election stipulation including him in the eligible bargaining unit.

Lastly, the Respondent contends that there is no prejudice to the General Counsel or the Charging Party because it has, in fact, been litigating such a defense all along based on extensive evidence elicited with respect to the time, place and manner of card signing from numerous witnesses. Moreover, it notes that the General Counsel and Charging Party are able to address the issue of Abare's supervisory status and recall every one of the Respondent's crew leader witnesses on rebuttal.

B. Supervisory Capacity Must be Pled as an Affirmative Defense

Affirmative defenses insufficiently pled are waived. See *The George Washington University*, 346 NLRB 155, 155 n.2 (2005) (affirmative defenses based on bare assertions are insufficient); *Circus Circus Hotel*, 316 NLRB 1235, 1235 n.1 (1995) (insufficient affirmative defenses will not be addressed). The purpose of an affirmative defense is to give the opposing party notice and a chance to argue in response. See *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 350 (1971); *accord Saks v. Franklin Covey Co.*, 316 F.3d 337, 350 (2nd Cir. 2003) (noting that "[o]ne of the core purposes of FRCP Rule 8(c) is to place opposing party notice and a chance to argue in response. See *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 350 (1971); *accord Saks v. Franklin Covey Co.*, 316 F.3d 337, 350 (2nd Cir. 2003) (noting that "[o]ne of the core purposes of FRCP Rule 8(c) is to place opposing parties on notice that a particular defense will be pursued so as to prevent surprise or unfair prejudice."); *accord Harris v. Sec'y, U.S. Dep't of Veterans Affairs*, 126 F.3d 339, 343 (D.C. Cir. 1997) (noting that "[f]ailure to raise an affirmative defense in pleadings deprives the opposing

[1] GC's Motion, Exhibit A, p. 1.

party of precisely the notice that would enable it to dispute the crucial issues of the case on equal terms.").

Supervisory status, if asserted as a defense, falls within the ambit of notice requirements in pleadings and must be affirmatively pled. *See Dole Fresh Vegetables*, 339 NLRB 785, 792-93 (2003); *St. Barnabas Hosp.*, 334 NLRB 1000, 1002-03 (2001) (party pleading supervisory status as an affirmative defense to an 8(a)(3) violation bears the burden of establishing that defense); *Springfield Manor*, 295 NLRB 17, 17 n.2 (1989) (supervisory status is a waivable affirmative defense). Thus, the Respondent needed to allege Abare's supervisory capacity if it intended to rely on it as a bar to the allegations in the complaint.

The absence of a defense based on Abare's supervisory capacity is also confirmed by the procedural history and events at the critical junctures of this litigation. It is not disputed that the Respondent omitted any reference to Abare's supervisory capacity during the investigation of the unfair labor practice charges, in its position statement,[2] and during the proceedings before the United States District Court for the Northern District of New York. In the District Court proceedings, the Respondent referred to "employee Everett Abare," and made no mention of his status as a supervisor.[3] Significantly, the Respondent explained in its opening statement in this case that its defense to the unfair labor practice charges would be premised on the "widespread misrepresentations in the process of soliciting union cards." Prominently absent was any suggestion that the cards would be invalid due to the supervisory status of Abare or other crew leaders who procured them.[4] Shortly thereafter, during oral argument relating to the subpoenaed production of disciplinary records, the Respondent failed to mention that the records were not relevant because Abare was a statutory supervisor.[5]

C. Respondent's Answer Failed to Plead Supervisory Capacity as a Defense

The Respondent's first affirmative defense states that it "has not interfered with, restrained or coerced any employee."[6] Its third affirmative defense states that "certain allegations, even if true, do not violate the Act."[7] Both defenses merely replicate the general denials already propounded as to the alleged violations in the complaint and provide no hint as to Respondent's intent to establish Abare's supervisory status.

The Respondent's eighth affirmative defense is similar to the third affirmative defense, except that it specifically mentions Abare: "even assuming that Mr. Abare engaged in legally cognizable concerted activity . . . such activity was not protected under the act."[8] Again, however, this defense refers to the allegedly unprotected nature of Abare's activity and provides no indication that the Respondent intended to rely on his alleged supervisory status.

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[2] *See* Letter from Novelis counsel to NLRB, Region 3 (May 16, 2014). Position statements are admissible as statements against interest. *See Rogers Corp.*, 344 NLRB 504, 510 n.5 (2005); *United Scrap Metal, Inc.*, 344 NLRB 467, 468 n.5 (2005); *McKenzie Eng'g Co.*, 326 NLRB 473, 485 n.6 (1998).

[3] Exhibit D, p. 2.

[4] Id. at 24.

[5] Tr. at 67-69, 81.

[6] GC Exh. 1(ii) at 8.

[7] Id.

[8] Id. at 9.

D. Respondent is Bound by its Pre-Election Stipulation

The Respondent also relies upon *Oakland Press*, 266 NLRB 107, 108 (1983), for the proposition that a pre-election stipulation as to supervisory status does not estop an employer from litigating that same question in a later proceeding. The decision in *Oakland Press*, however, was later clarified by the Board's subsequent opinions in *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921, 922 (1997) and *Premier Healthcare*, 331 NLRB 123, 123 n.5 (2000). Those decisions held that, while an employer is not bound by its litigation position in regard to supervisory status in an earlier proceeding which averted that issue, an employer is bound by an election agreement which stipulates supervisory status. *See also Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1049-50 (2003). The Respondent decided this question in favor of Abare's participation in the proposed bargaining unit when it stipulated to his eligibility to vote in the election.

E. Permitting the Introduction of Evidence of Supervisory Capacity would be Prejudicial

Finally, the belated introduction into this case of an issue based on Abare's alleged supervisory capacity would indeed prejudice the General Counsel and Charging Party. The General Counsel has completed its case and the Respondent has called numerous witnesses touching on the subject of the union authorization card transactions. After hearing from dozens of witnesses over the course of 15 hearing days touching on the subject of the union authorization card transactions, permitting the Respondent to litigate Abare's supervisory status would likely result in the General Counsel recalling many, if not most, of the witnesses who have already testified in order to contest that issue. This would result in undue delay and unfairly prejudice the General Counsel and Charging Party. See *Stroehmann Bros.*, 268 NLRB 1360, 1361 n.10 (1984) (exclusion of potentially material evidence is proper when its probative value is outweighed the amount of time which would be consumed by pursuing collateral issues); *see also* Fed. R. Evid. 403.

Based on the foregoing, it is ORDERED that the motion of the General Counsel and Charging Party precluding the Respondent from asserting an affirmative defense that Everett Abare is a statutory supervisor pursuant to Section 2(11) of the Act is granted.

Dated, Washington, D.C. October 16, 2014

Michael A. Rosas
Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NOVELIS CORPORATION

and

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UNITED STEEL PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

NOVELIS CORPORATION
Employer

and

03-RC-10447

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION AFL-CIO

Petitioner

AFFIDAVIT OF SERVICE: **ORDER GRANTING MOTION BY COUNSEL FOR GENERAL COUNSEL AND CHARGING PARTY TO PRECLUDE EVIDENCE REGARDING SUPERVISORY STATUS OF EVERETT ABARE**

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I certify that on October 16, 2014, I emailed copies of Order Granting Motion by Counsel for General Counsel and Charging Party to Preclude Evidence Regarding Supervisory Status of Everett Abare

C N Davidson

Carletta Davidson
Division of Judges (NLRB)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION

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NOVELIS CORPORATION

Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO **Case 03-RC-120447**

Petitioner

GENERAL COUNSEL'S MOTION IN OPPOSITION TO RESPONDENT'S UNPLED AFFIRMATIVE DEFENSE THAT EVERETT ABARE IS A STATUTORY SUPERVISOR UNDER THE ACT AND MOTION TO STRIKE SUPPORTIVE TESTIMONY

Counsel for the General Counsel (General Counsel), respectfully requests that Administrative Law Judge Rosas (Your Honor) preclude Respondent from asserting at this late juncture the affirmative defense that Everett Abare is a statutory supervisor pursuant to Section 2(11) of the Act.

After months of litigation, Respondent contended for the first time at the administrative hearing on October 4, 2014 that Everett Abare is a statutory supervisor. Given the timing of this

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assertion, it defies belief that Respondent has any legitimate basis for asserting this defense at this juncture. In this regard, Respondent has never asserted that Abare is a supervisor. On the contrary, Respondent stipulated to his inclusion in the bargaining unit in Case 03-RC-120447, and included his name on the Excelsior list that it provided to the Board in connection with that election. (Exhibit A, p. 1). Further, Respondent never took the position that Abare was a supervisory during the investigation of the unfair labor practice charges, nor did it raise this issue during the federal district court proceeding before the U.S. District Court for the Northern District of New York.

Respondent now attempts to manufacture a supervisory defense from its first, third and eighth affirmative defenses in its Amended Answer in order to blindside the General Counsel and prevent the full and fair litigation of this issue. Permitting Respondent to litigate Abare's supervisory status now, after the conclusion of the General Counsel's direct case and after Respondent has already presented a significant number of witnesses, is highly prejudicial to the General Counsel's case and to the "expeditious disposition of disputes arising under the Act." KFXM Broadcasting Co., 183 NLRB 1187, 1203 (1970)(every defense in law or fact must be timely raised in the responsive pleadings or by motion at the hearing or else such defenses are waived.).

The General Counsel respectfully requests that Respondent be precluded from raising the issue of Abare's supervisory status, and that any testimony introduced by Respondent with respect to this issue be stricken from the record for the following reasons.

I. Respondent Admitted in its Answer that Everett Abare is An "Employee" of Novelis

The Second Consolidated Complaint ("Complaint") alleges in Paragraph XIV(b) that

"Respondent demoted its **employee** Everett Abare." [emphasis added] Respondent, in its Amended Answer to the Second Consolidated Complaint ("Answer"), dated June 15, 2014, specially admits in its responsive pleading that Abare is an employee of Respondent. This portion of Respondent's Answer is inconsistent with the position it now takes that its vague assertions in its first and third affirmative defenses constituted a assertions that Abare is a supervisor. Further, in its eighth affirmative defense, and the only one in which Respondent mentions Abare, Respondent never asserted that he is a supervisor, but rather merely claimed that his conduct was not protected under the Act. Thus, it is clear from a plain reading of Respondent's Answer when viewed in connection with Respondent's failure to assert Abare as a supervisor during the election or the investigation of the unfair labor practice charges, that Respondent never intended to affirmatively plead that Abare is a Section 2(11) supervisor.

The Board finds admissions in an answer binding on a respondent even where potentially conflicting evidence is adduced on the record.[1] Harco Trucking, 344 NLRB 478 (2005). Furthermore, the General Counsel can rely on admissions pled by a respondent and need not litigate the issue because respondent, by its admission, took the issue out of the case. Harco Trucking, 344 NLRB at 479, citing Boydston Electric, Inc, 331 NLRB 1450, 1451 (2000). Consistent with the Board's finding in Liberty Natural Products, 314 NLRB 630 (1994), enfd. mem. 73 F.3d 369 (9th Cir. 1995), cert. denied 518 U.S. 1007 (1996) that the respondent's admission of an individual's supervisory status is binding, Respondent should be bound by its admission in its Answer that Abare is an employee,

Furthermore, Respondent admitted the appropriateness of the bargaining unit in paragraph XV(a) and, as noted above, Respondent took the position during Case 03-RC-120447

[1] Herein, the record contains no evidence that Abare is a statutory supervisor. Although Respondent contends that it raised the issue by referencing Abare's "leadership" role, it never asserted that Abare exercised any of the 12 supervisory indicia set forth in Section 2(11) of the Act.

that Abare was in that unit. While such evidence may not be conclusive as a matter of law, it is persuasive and indicative of the fact Respondent never raised the issue of Abare's supervisory status because it has no legitimate belief that he is a statutory supervisor.

II. Respondent Failed to Plead As An Affirmative Defense Its Contention Abare is a Supervisor

Respondent contends that it pled in its first, third and eighth affirmative defenses that Everett Abare was a statutory supervisor pursuant to Section 2(11) of the Act in defense of Paragraphs XIV, XIX and XX of Complaint.[2]

The plain language of Respondent's Answer contains nothing that arguably constitutes an affirmative defense that Abare is a statutory supervisor. As noted above, Respondent's Answer does not even place Abare's supervisory status at issue, but rather admits that he is an employee. The only paragraph of the three affirmative defenses asserted by Respondent that specifically references Abare, Respondent's eighth affirmative defense, only raises the issue that Abare's conduct was not protected, and thus constitutes a tacit admission that Abare is covered by the Act.

The general denials relied on by Respondent in its Answer are insufficient to put any party, including the trier of fact, on notice that Respondent intended to litigate the Section 2(11) status of Abare. On the contrary, as noted above, a plain reading of Respondent's Answer demonstrates that Respondent admitted that Abare is an employee under the Act.

[2] Paragraph XIV of the Complaint alleges Abare's unlawful demotion; Paragraphs XIX and XX allege the specific sections of the Act that Respondent violated by its conduct.

III. Respondent Waived The Defense that Abare is a Supervisor Under the Act and Should be Precluded from Commencing Litigation at this Juncture

The Board has long applied the Federal Rules of Civil Procedure for pleading affirmative defenses. Fed. R. Civ. Pro. Rule 8(c) requires "any . . . matter constituting an avoidance or affirmative defense" shall be affirmatively pled; and Fed. R. Civ. Pro. 12(b) provides that "[e]very defense, in law or in fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required." KFXM Broadcasting Co., 183 NLRB 1187, 1203 (1970).

The Board views as waived all defenses which are not raised timely either in the pleadings or, where appropriate, by motion during the hearing. Id. at 1203, quoting Houston Sheet Metal Contractors Association, 147 NLRB 774, 778. More important to the instant case, an affirmative defense alleging supervisory status is untimely if not raised in respondent's answer or prior to the conclusion of the General Counsel's case-in-chief. Haynie Electric Co., Inc., 225 NLRB 353 (1976)(administrative law judge found untimely respondent's unpled supervisory affirmative defense when it attempted to raise the issue during its case after the General Counsel's case-in-chief.).[3] Even where the trier of fact has permitted a last-minute amendment to an answer to include a supervisory affirmative defense, it did so because the respondent had freely submitted evidence during the investigation of the unfair labor practice charges, and taken the position in a stipulated election agreement that the position was voting subject to challenge because it was asserted to be part of management. Massey-Harris-Ferguson, 114 NLRB 328, 337 (1955).

In the instant case, Respondent stipulated to the inclusion of Abare's position in the bargaining unit, and never raised the issue or submitted evidence during the investigation, the

[3] The Board declined to consider the administrative law judge's finding with respect to the waiver.

administrative proceeding, or the federal court proceeding to support a supervisory affirmative defense. Further, Respondent does not seek to assert Abare's supervisory status based on evidence that was adduced during the administrative trial that was unknown to Respondent at the time it filed its Answer. On the contrary, Respondent seeks to amend its position with respect to Abare based solely on evidence that it had in its possession all along and, in fact, that it purportedly relied on in support of its decision to demote him – his leadership role. (Exhibit C, p. 2). Respondent's assertion that it affirmatively raised Abare's supervisory status in its Answer is nothing more than an attempt to render the affirmative defense timely because Respondent is well aware that it has no basis to properly raise this issue for the first time at this late stage of the hearing. For Respondent to now argue for the first time, after the General Counsel's case-in-chief and seven days into its own case, that Abare is a 2(11) supervisor, is highly prejudicial and Respondent should be precluded from asserting this affirmative defense and litigating a matter that is not properly at issue in this case.

IV. Respondent's Contention that Abare Held "Leadership" Roles Fails to Place At Issue His Supervisory Status

Respondent may assert that the General Counsel was on notice of its supervisory affirmative defense. However, throughout this entire protracted ordeal, Respondent has never raised such an issue until now. Furthermore, Respondent's vague references to Abare's "leadership" positions or roles within the plant do not amount to an assertion that he is a supervisor. Rather, Respondent's position from the filing of the petition for election until October 4, 2014 was that Abare *is* a employee.

During the investigation of Abare's demotion, Respondent, in its Position Statement to the Region dated May 16, 2014, never asserted that Abare is a supervisor. (Exhibit C).

- The issue [of Abare's demotion] came to Management's attention through the expressed concerns of *his fellow co-workers*"
- "At the time Abare functioned as a shop floor leader as a Crew Leader and served as a member of the Oswego plant's important Fire Department and EMT squad and as a trainer. Each of these roles represents a position of leadership within the plant. On April 11, 2014, due to his highly unprofessional conduct and the concerns expressed about his willingness to help *fellow employees* in the event of an emergency, the Company removed Mr. Abare's Crew Leader designation and his role with the Fire Department and EMT squads and in training.
- . . . Mr. Abare was not removed from his leadership positions for violating the Company's social media policy or in retaliation for alleged exercise of Section 7 rights; rather the Company removed him from those roles due to his use of discriminatory epithets . . . . . Further, calling *co-workers* "F*#TARDs and telling them to "Eat $hit" is neither protected nor concerted activity.

In fact, Respondent's Position Statement makes repeated references to Abare as an employee, or simply as a leader, but never as a supervisor exempt from the protection of the Act. Respondent's Answer is consistent with the position that it took during the investigation, that Abare's conduct was not protected concerted activity.

Further, from the commencement of the administrative hearing until October 4, 2014, Respondent reaffirmed the position that it took during the investigation and the litigation of the charges until that point: that Abare is an employee whose conduct was not protected concerted activity.

a. Oral argument regarding Subpoena production

Respondent was specifically challenged by Your Honor as to why it should not be required to produce all employee disciplines sought pursuant to General Counsel Subpoena Item No. 24.[4] (Exhibit B Tr. 67 – 69). At no time did Respondent assert that the documents were not relevant because Abare was a statutory supervisor, thus distinguishing him from other unit employees.

b. During Respondent's Opening Statement it never referenced an affirmative defense that Abare was a supervisor. See (Tr. 18-35)

Board law is replete with cases finding that employees with leadership roles such as foreman or leads are not statutory supervisors. See, e.g., In re Dole Fresh Vegetables, 339 NLRB 785 (2003). Mere reference to Abare's leadership capacity fails to place at issue his 2(11) status, nor does it amount to notice to the General Counsel or the tribunal that Respondent intends to contend that Abare is a supervisor.

Lastly, Respondent never asserted that Abare was a supervisor and not subject to the protections of the Act in the district court proceeding. (See Exhibit D).[5] Instead, Respondent asserted that Abare's conduct violated its "Code of Conduct by not treating employees with respect, fairness and dignity, that it was unprofessional and counter to proper *employee* conduct and Emergency Medical Services decorum, and demonstrated a failure to exercise sound judgment." [Emphasis added]

Furthermore, Respondent asserts in its filings with the district court attached hereto as Exhibit D that Abare's conduct was "amplified by the fact that he served in leadership roles (Crew Leader, Fire Department, EMT) that each involves an important *safety component* within

[4] True copies of all employee discipline issued during the period May 2013 to the present.
[5] Because of the length of the document, the undersigned is only attaching that portion of Respondent's Opposition to 10(j) Petition (Memorandum of Law) limited to Abare's discipline. The redacted portions of Respondent's Opposition to 10(j) Petition remove any references to arguably confidential information.

the Oswego facility." Not once in all of Respondents statements about Abare's conduct and his leadership roles did Respondent state that such roles endowed him with supervisory authority.

V. Evidence on Abare's Supervisory Status is Prejudicial to the General Counsel

It is prejudicial to the General Counsel's case to permit Respondent to now adduce evidence of Abare's supervisory status. Because Respondent failed to plead Abare's status as an affirmative defense and failed to otherwise place the General Counsel on notice that his status was at issue in the case, the General Counsel did not adduce evidence from its witnesses in its case-in-chief as to the supervisory indicia, or lack thereof, of crew leaders, fire captions or EMT members. Furthermore, the General Counsel did not elicit testimony on cross-examination of Respondent's witnesses, most of which were crew leaders, as to their duties, or those observed by crew leaders, fire captains or EMTs.

In light of Respondent's late-hour assertion that Abare is a unique supervisor because of his various positions, Counsel for the General Counsel has been unable to test the veracity of such an assertion by investigating and calling witnesses on the issue. If Respondent is permitted to litigate this issue at this stage of the administrative proceeding, the General Counsel would be forced to recall numerous witnesses to the stand in order to fully litigate Abare's 2(11) status. For the reasons stated above, Respondent should be precluded from presenting evidence as to Abare's supervisory status and from amending its Answer to plead such a defense.

VI. Counsels for Respondent's attempt to raise the affirmative defense that Abare is a statutory supervisor violates the strictures of Section 102.21 of the Board's Rules and Regulations.

Section 102.21 of the Board's Rules and Regulations states, in relevant part:

> The signature of the attorney or non-attorney party representative constitutes a certificate by him/her that he/she has read the answer; that to the best of his/her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

> If an answer is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the answer had not been served. For a willful violation of this section an attorney or non-attorney party representative may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

Respondent's counsels in the administrative proceeding have represented Respondent throughout the unfair labor practice investigations, the federal court proceeding, and this administrative hearing. The General Counsel contends that, based on counsels' position regarding Abare throughout the history of this labor dispute, counsels have no good-faith basis to suddenly contend that Everett Abare is a supervisor. This is not a situation involving a pro se employer, or counsel unfamiliar with the Act. Rather, Respondent's attorneys herein are highly experienced in practicing before the Board, and have litigated Section 2(11) supervisory issues in the past. See, e.g., Bay Harbour Electric Inc., 348 NLRB 963 (2006)(litigated by Kurt Powell, Esq.). Notwithstanding counsels' comprehension of the significance of Section 2(11) status with respect to Abare, Respondent's legal representatives never raised the issue during the investigation of the charges, and given their collective experience, it defies belief that they were unable to clearly articulate either on paper or at the commencement of the hearing the affirmative defense they now assert is hidden in Respondent's Answer.

By waiting until the conclusion of the General Counsel's direct case, and the testimony of a number of their own witnesses, Respondent's legal representatives seek to place the General Counsel in the unenviable position of having to either recall numerous General Counsel and Respondent witnesses to the stand to fully litigate Abare's supervisory status,[6] or to leave the tribunal to rely solely on the evidence that Respondent seeks to adduce near the conclusion of the

[6] Assuming Your Honor permits the General Counsel leave to do so.

hearing. Given the above, the late stage of the proceeding, and the fact that counsels have not learned anything during the course of these proceedings regarding Abare's purported supervisory status that they did not know when they responded to the unfair labor practice charges and filed Respondent's Answer, the only conclusion to be drawn from Respondent's attorneys' October 4, 2014 bombshell is that they are asserting Abare's supervisory status as a mechanism to delay and obfuscate this already protracted proceeding.[7] The Board has expressed its strong disapproval of similar conduct by attorneys. See Graham-Windham Services to Families and Children, Inc., 312 NLRB 1199 (1993)(Board affirmed administrative law judge's recommendation that attorneys be admonished for frivolously asserting and then litigating the issue of labor organization status); M.J. Santulli Mail Services, 281 NLRB 1288 (1989)(Board admonished counsel for interposing an answer denying labor organization status where counsel had no good-faith doubt about status of the union); Worldwide Detective Bureau, 296 NLRB 148 (1989)(Board found that counsel willfully violated Section 102.21 of the Board's Rules when it interposed any answer made in bad faith and in order to delay case proceedings).

Based on the above, the General Counsel respectfully requests that Your Honor prohibit Respondent from asserting that Everett Abare is a Section 2(11) supervisor and strike from the record any testimony that Respondent has introduced into the record in support of that contention.

[7] Counsels' bad faith is bolstered by their assertion that, remarkably, only Abare, and not that all crew leaders, are supervisors.

Dated at Buffalo, New York this 10th day of October, 2014.

/s/Nicole Roberts

Nicole Roberts, Counsel for the General Counsel
National Labor Relations Board – Region 3
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Buffalo, New York 14202
Nicole.roberts@nlrb.gov

Novelis Oswego Excelsior List - Payroll Period Ending January 12, 2014 (Shaded Text = No Longer Employed)

First Name	Last Name	Address1	Address2	City	State	Postal
EVERETT	ABARE	8 GREENVALE LANE		OSWEGO	NY	13126-0000
Timothy	Abbott	310 Highland St.		Fulton	NY	13069
Robert	Abel	416 County Route 51		Mexico	NY	13114
Anthony	Alelunas	3556 Co. Rt. 45		Oswego	NY	13126
Joseph	Allen	346 Co. Rt. 23		Constantia	NY	13044
Roger	Allen	533 PEAT BED RD.		HANNIBAL	NY	13074
Scott	Allen	14309 Rt. 370		Red Creek	NY	13143
Odis	Allison	109 West Seneca St.		Oswego	NY	13126
BRIAN	ANDERSON	129 NINE MILE POINT RD.		OSWEGO	NY	13126-0000
TIMOTHY	ANNAL	354 WEST 5TH STREET		OSWEGO	NY	13126-0000
ROBERTO	ASCENZI	202 EAST 6TH. ST.		OSWEGO	NY	13126-0000
James	Ashby	421 County Route 6		Phoenix	NY	13135
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
GEORGE	AXTELL	712 PEAT BED RD.		HANNIBAL	NY	13074-0000
Erin	Aylesworth	11899 St. Rt. 34		Cato	NY	13033
DEREK	BAILEY	402 Darrow Road		Mexico	NY	13114
JEFFREY	BAKER	P. O. BOX 326		HANNIBAL	NY	13074-0000
Jeffrey	Baker	6 Clear Springs Dr		Oswego	NY	13126
ARTHUR	BALL	19 West First St. North	Apt. #2	FULTON	NY	13069-0000
MARK	BARBAGALLO	98 KINGDOM RD.		OSWEGO	NY	13126-0000
JOHN	BARBUR	11 GERMAR DR.		OSWEGO	NY	13126-0000
GORDON	BARKLEY	8264 STATE ROUTE 104		OSWEGO	NY	13126-0000
SHAWN	BARLOW	71 PERRY HILL RD.		OSWEGO	NY	13126-0000
William	Barton	219 Golfcrest Cir		Baldwinsville	NY	13027
Michael	Basile	9622 Bratt Lane		Brewerton	NY	13029
Charles	Battles	2480 Co. Rt. 6		Fulton	NY	13069
MARC	BAUER	427 Silk Rd.	Lot 30	Fulton	NY	13069
Scott	Baum	3613 St. Rt. 3		Fulton	NY	13126
SCOTT	BEAN	13550 ST. RT. 38		MARTVILLE	NY	13111-0000
NORMAN	BECK	766 MIDDLE RD		OSWEGO	NY	13126-0000
GARY	BECKER	200 CHASE RD.		FULTON	NY	13069-0000

Exhibit A

RYAN	BECKER	8 DIANE AVE.		FULTON	NY	13069-0000
MARTIN	BEEMAN	512 BEECH ST.		FULTON	NY	13069-0000
ROGER	BEGINSKI	435 BLYTHE RD.		HANNIBAL	NY	13074-0000
JOSEPH	BELL	83 DOWNEY DRIVE		OSWEGO	NY	13126-0000
Mark	Bellucci	8462 Marco Ln		Baldwinsville	NY	13027
PETER	BENTON	3398 MAIN ST.		MEXICO	NY	13114-0000
George	Benton III	147 WEST 5TH ST. RD.		OSWEGO	NY	13126
SHANE	BESAW	1220 Co. Rt. 8		OSWEGO	NY	13126-0000
JASON	BIVENS	102 East 7th St.		OSWEGO	NY	13126-0000
Victor	Blair	1723 CO RT 6		FULTON	NY	13069
MICHAEL	BLUM	87 Ontario St.		OSWEGO	NY	13126-0000
Jerry	Blum Jr.	213 E. 8TH ST.		OSWEGO	NY	13126
MATHEW	BLUNT	520 Darrow Road		Mexico	NY	13114
JOHN	BOARDWAY	274 East Cherry St.		OSWEGO	NY	13126-0000
SHERI	BOARDWAY	337 Thompson Rd.	Lot C2	Oswego	NY	13126
Nicholas	Bolton	95 Emery Rd.		Fulton	NY	13069
RICHARD	BONNEY	14500 STATE RTE 104		RED CREEK	NY	13143-0000
Joseph	Bordonaro	9312 Conquest Rd.		Port Byron	NY	13140
David	Bouchard	513 Kellogg St.		Fulton	NY	13069
RICHARD	BOWERING	2999 STATE ROUTE 3		Fulton	NY	13069
Luke	Boyea	423 Co. Rt. 1A		Oswego	NY	13126
TIMOTHY	BOYZUCK	40 MCWHORTER ST.		OSWEGO	NY	13126-0000
SHAWN	BRACY	188 MINER RD.		OSWEGO	NY	13126-0000
TIMOTHY	BRADSHAW	40 Franklin Ave.		OSWEGO	NY	13126-0000
MICHAEL	BRASSARD	853 Co. Rt. 6		Volney	NY	13069
KEVIN	BREEN	202 LIBERTY STREET		OSWEGO	NY	13126-0000
ERIK	BROCKWAY	10B MAGNOLIA RD.		OSWEGO	NY	13126-0000
JEFFREY	BROSS	325 HINSDALE ROAD		CAMILLUS	NY	13031-0000
RICHARD	BROWN	59 BRONSON ST.		OSWEGO	NY	13126-0000
Scott	Brown	221 Gilbert Mills Rd		Phoenix	NY	13135
WILLIAM	BROWN	70 SMITH BEACH ROAD		OSWEGO	NY	13126-0000
Matthew	Bucher	4 Sunrise Drive		Oswego	NY	13126
JOHN	BUGOW	214 EAST 5TH. ST.		OSWEGO	NY	13126-0000
Timothy	Bulger	198 East Albany Street	Apt 9C	Oswego	NY	13126

CORT	BULLARD	93 EISENHOWER AVENUE		OSWEGO	NY	13126-0000
RICHARD	BURDICK	649 Rathburn Rd.		Oswego	NY	13126
GARRY	BURTON	4855 STATE ROUTE 104		OSWEGO	NY	13126-0000
MELANIE	BURTON	156 CO. RT. 24		OSWEGO	NY	13126-0000
SHANE	BURTON	156 CO. RT. 24.		OSWEGO	NY	13126-0000
Scott	Buske	416 Co. Rt. 51		Mexico	NY	13114
Daniel	Buskey	956 MIDDLE RD.	LOT 17A	OSWEGO	NY	13126
RODNEY	BUSKEY	796 CO. RT. 1		OSWEGO	NY	13126-0000
RYAN	BUSKEY	671 COUNTY ROUTE 1		OSWEGO	NY	13126-0000
MICHAEL	CAHILL	18 MURRAY ST		OSWEGO	NY	13126-0000
Anthony	Caltabiano	9 Helbock Dr		Phoenix	NY	13135
MARK	CALTABIANO	595 COUNTY ROUTE 6		PHOENIX	NY	13135-0000
Alicia	Canale	138 East 6th St		Oswego	NY	13126
ZACHARY	CANOUGH	198 EAST ALBANY ST	APT 5B	OSWEGO	NY	13126-0000
Vincent	Cappelletti	PO Box 82		Martville	NY	13111
CHRISTOPHER	CAROCCIO	PO BOX 5439		OSWEGO	NY	13126-0000
DENNIS	CARPENTER	337 Thompson Rd.	Lot E3	OSWEGO	NY	13126-0000
Derek	Carr	1150 Middle Road		Oswego	NY	13126
MARK	CARSON	1318 CO. RT. 1		OSWEGO	NY	13126-0000
Jeffrey	Carter	P.O. Box 132		Pennellville	NY	13132
Billy	Carter II	18 Tudo Road		Mexico	NY	13114-0000
DANIEL	CARTIER	292 TUBBS RD.		MEXICO	NY	13114-0000
Louis	Castaldo	38 Erie St Apt 3		Oswego	NY	13126
ROBERT	CASTIGLIA	917 CO. RT. 25		OSWEGO	NY	13126-0000
Lucas	Chesbro	233 Tug Hill Road		Oswego	NY	13126
MICHAEL	CHWALEK	369 RIDGE ROAD		OSWEGO	NY	13126-0000
MICHAEL	CLARK	311 GREEN RD.		MEXICO	NY	13114-0000
BENJAMIN	CLARKE	56 BLIND ROAD		MEXICO	NY	13114-0000
KIMBERLY	CLARY	316 FURNISS STATION RD		OSWEGO	NY	13126-0000
SHAWN	CLARY	289 FURNISS RD.		OSWEGO	NY	13126-0000
DAVID	CLOONAN	870 CO. RTE. 25		OSWEGO	NY	13126-0000
Bryan	Coe	1430 Co. Rt. 53		Oswego	NY	13126
Gary	Coleman	5367 St. Rt. 104		Oswego	NY	13126-0000
Aaron	Conn	1938 County Route 6		Fulton	NY	13069

William	Considine	2784 Lamson Rd.		Phoenix	NY	13135
RONALD	CONSTANZA	43 HALL RD.		HANNIBAL	NY	13074-0000
Dustin	Cook	141 East 5th St		Oswego	NY	13126
ROBERT	COREY	188 BROWN RD.		HANNIBAL	NY	13074-0000
William	Corey	14 Clintonwood Dr.	Apt. B	Rochester	NY	14620
DANIEL	COTTER	69 WEST 8TH ST.		OSWEGO	NY	13126-0000
JASON	COTTER	6 West 8th St.		OSWEGO	NY	13126-0000
DENNIS	COULTER	231 KINGDOM ROAD		OSWEGO	NY	13126-0000
Allen	Cowan	399 County Route 3		Fulton	NY	13069
Cody	Crouse	703 Middle Rd.		Oswego	NY	13126
RICHARD	CUMMINS	1079 County Route 35		Mexico	NY	13114
Peter	Curinga	6347 Mud Mill Rd		Brewerton	NY	13029
CATHY	CZIRR	545 COUNTY ROUTE 35		FULTON	NY	13069-0000
George	Dale	7633 Windsor Drive North		North Syracuse	NY	13212
ROBERT	DARLING	8528 Bayridge Rd.		Cicero	NY	13039
Daniel	Dedeo	179 E. 5th St.		Oswego	NY	13126
ALAN	DEFOREST	164 W 2ND ST. SOUTH		FULTON	NY	13069-0000
BRANDON	DELANEY	161 EAST UTICA STREET		OSWEGO	NY	13126-0000
George	Delong	599 O'Connor Rd.		Oswego	NY	13126
Mark	DeLong	1040 Auburn St		Hannibal	NY	13074
ROBERT	DELONG	P. O. BOX 5226		OSWEGO	NY	13126-0000
KATHERINE	DEMAREST	1210 Land Rush Way		Baldwinsville	NY	13027
DAVID	DEMLING	15 RIDGEWAY SITES		OSWEGO	NY	13126-0000
STEPHEN	DEMONG	977A CO. RT. 20		OSWEGO	NY	13126-0000
Timothy	DeMott	29 Birch Lane	Apt. 18F	Oswego	NY	13126
GERALD	DENNIE	293 W 5TH ST		OSWEGO	NY	13126-0000
CARIE ANNE	DENNY	27 SAGE CREEK RD.		MEXICO	NY	13114-0000
Mark	Denny Jr	27 Sage Creek Rd.		Mexico	NY	13114-0000
Michael	Deno	81 Halladay Road		Mexico	NY	13114-0000
LINDA	DERUSHIA	124 VILLA ST.		ROCHESTER	NY	14606-0000
JOSEPH	DESTEVENS	2259 CO. RT. 8		OSWEGO	NY	13126-0000
WILLIAM	DEVENEY	805 Co. Rt. 85		Oswego	NY	13126
JASON	DEXTER	443 CO. RT. 85		FULTON	NY	13069-0000
Nathan	Diehl	160 West Bridge St.		Oswego	NY	13126

RICKY	DOHERTY	184 EAST 7TH ST.		OSWEGO	NY	13126-0000
DAVID	DOMICOLO	122 W. MYERS RD.		OSWEGO	NY	13126-0000
SEAN	DOMICOLO	3 FREDRICKSBERG FARE		OSWEGO	NY	13126-0000
JACK	DONOVAN	4230 St. Rt. 104		Mexico	NY	13114
DALE	DOPP	2538 STATE ROUTE 3		FULTON	NY	13069-0000
RANDY	DORVAL	59 WHITTEMORE RD.		OSWEGO	NY	13126-6605
DAVID	DOYLE	286 DUER ST		OSWEGO	NY	13126-0000
Joseph	Drews	732 Ridge Rd.		Oswego	NY	13126
CHRISTOPHER	DRISCOLL	223 LIBERTY ST.		OSWEGO	NY	13126-0000
SCOTT	DRUCE	2742 CO. RT. 4		FULTON	NY	13069-0000
Eric	Dunsmoor	7757 St. Rt. 104		Oswego	NY	13126
Thomas	Dunsmoor	7757 State Route 104		Oswego	NY	13126
WILLIAM	DUNSMORE	212 NORTH AVE		ROCHESTER	NY	14626-0000
ANDREW	DUSCHEN	959 CO RT 29		OSWEGO	NY	13126-0000
DAVID	DUSCHEN	1227 CO. RT. 1		OSWEGO	NY	13126-0000
STEPHEN	DUSCHEN	454 MIDDLE ROAD		OSWEGO	NY	13126-0000
TRISHA	EARL	164 EAST 9TH ST		OSWEGO	NY	13126-0000
ROBERT	ELLIS	234 EDWARDS ST.		OSWEGO	NY	13126-0000
Christopher	Emond	7 Dominic St.		Oswego	NY	13126
BRADFORD	EWIG	31 BUTTERNUT DRIVE		OSWEGO	NY	13126-0000
JOSEPH	FALCETTI	53 East 4th	Apt. B	OSWEGO	NY	13126-0000
STEPHEN	FALISE	812 MIDDLE RD.		OSWEGO	NY	13126-0000
NATHAN	FARELLA	20 Kennedy Ave.		Oswego	NY	13126-0000
Frederick	Farley	253 E. 6th St.		Oswego	NY	13126-0000
Richard	Farrands	462 West Second St.so.		Fulton	NY	13069-0000
JAMES	FAVATA	421 W 5TH ST		OSWEGO	NY	13126-0000
TIMOTHY	FAVATA	196 Creamery Rd.		OSWEGO	NY	13126-0000
Bernard	Finnegan	70 Soper Mills Road		Mexico	NY	13114
ANN	FITZGERALD	777 DUTCH RIDGE RD		OSWEGO	NY	13126-0000
MATTHEW	FITZSIMMONS	2996 ST. RT. 48		OSWEGO	NY	13126-0000
RONALD	FLACK	1915 ANDREWS RD		STERLING	NY	13156-0000
Troy	Flack	3913 Co Rt 57		Oswego	NY	13126
Andrew	Flynn	179 East 7th St.	Apt 1	Oswego	NY	13126
Mark	Forderkonz	6463 Long Point Rd.		Brewerton	NY	13029-0000

Brian	Formoza	8271 Honeysuckle Drive		Liverpool	NY	13090
Timothy	Foster	317 West 1st Street	Apt 402	Oswego	NY	13126-0000
William	Fowler	521 Academy St.		Fulton	NY	13069
MARK	FRAGALE	73 BAITSELL DR.		OSWEGO	NY	13126-0000
BRANDON	FRANCE	2168 CO. RT. 1		OSWEGO	NY	13126-0000
DANIEL	FRANCE	80 SHORE OAKS DRIVE		OSWEGO	NY	13126-0000
DEREK	FRANCISCO	82 WOODVIEW DR.		PARISH	NY	13131-0000
MATTHEW	FREY	78 TALLMAN ST.		OSWEGO	NY	13126-0000
THOMAS	FREY	59 EAST 4TH STREET		OSWEGO	NY	13126-0000
Donald	Friot III	Po Box 192		Sandy Creek	NY	13145-0000
GARY	GABRIELLE	43 NESTLE DRIVE		OSWEGO	NY	13126-0000
JAMES	GALLETTA	92 EAST CAYUGA ST		OSWEGO	NY	13126-0000
Patrick	Gariepy	8492 Van Wie Dr. West		Baldwinsville	NY	13027
MARK	GARLOCK	768 SILK RD.		FULTON	NY	13069-0000
Joseph	Gawlak	54 Hickory Grove Rd.		Fulton	NY	13069
Tracy	Gayne	149 Larkin Road		Mexico	NY	13114
Christopher	Gentile	116 W Schuyler St		Oswego	NY	13126
LEE	GERMAIN	286 East 10th St.		OSWEGO	NY	13126-0000
GEORGE	GEROUX	195 E. 8th St.		OSWEGO	NY	13126-0000
JAIME	GEROUX	379 Klocks Corner Rd.		OSWEGO	NY	13126-0000
FLOYD	GIBSON	290 CREAMERY ROAD		OSWEGO	NY	13126-0000
GREGORY	GIBSON	290 CREAMERY RD.		OSWEGO	NY	13126-0000
David	Gill	304 Creamery Rd.		Oswego	NY	13126-0000
Nathan	Gingerich	143 West Mohawk St.	Upper Apt.	Oswego	NY	13126
Carmen	Giocondo	124 Hinsdale Rd.		Syracuse	NY	13211
Anthony	Giuffrida	11577 Rte. 176		Cato	NY	13033
MICHAEL	GLAZIER	37 PROSPECT ST.		LACONA	NY	13083-0000
Nathan	Glenister	768 U.S. Route 11		Central Square	NY	13036
DAVID	GODFREY	220 Perry Rd.		Pennellville	NY	13132-0000
DANIEL	GOODROW	3935 CR. RT. 6		OSWEGO	NY	13126-0000
WILLIAM	GRAHAM	PO BOX 92		MINETTO	NY	13115-0000
GARY	GRANGER	33 MASON ROAD		MEXICO	NY	13114-0000
MICHAEL	GRANGER	777 DUTCH RIDGE RD		OSWEGO	NY	13126-0000
JAMES	GRANT	853 CO RT 6		FULTON	NY	13069-0000

JOHN	GRAY	304 WALNUT STREET		OSWEGO	NY	13126-0000
NICHOLAS	GRAY	220 DUER STREET		OSWEGO	NY	13126-0000
JOSEPH	GRECO	1769 ENO RD.		MARTVILLE	NY	13111-0000
DARREN	GREENIER	2706 ST. RT. 3		FULTON	NY	13069-0000
CHERYL	GREER	447 CO. RT. 14		FULTON	NY	13069-0000
KRISTIN	GREER BENTON	3398 MAIN STREET		MEXICO	NY	13114-0000
THOMAS	GREGWAY	16 SABILL DRIVE		MEXICO	NY	13114-0000
Charlene	Grey	23 Kranz Rd.		Mexico	NY	13114
JACOB	GREY	118 Miner Road		Oswego	NY	13126
GREGORY	GRIFFIN	5 MITCHELL STREET		OSWEGO	NY	13126-0000
Joseph	Griffin	198 East Albany Street	Apt 5A	Oswego	NY	13126
SCOTT	GRIMSHAW	50 CO. RTE. 42		OSWEGO	NY	13126-0000
CHARLES	GURNEY	537 COUNTY ROUTE 85		FULTON	NY	13069-0000
DANIEL	HAGAN	357 BALDWIN RD.		FULTON	NY	13069-0000
VERRICK	HAGER	4703 STATE ROUTE 3		CENTRAL SQUARE	NY	13036-0000
CRAIG	HAINES	222 KLOCKS CORNERS ROAD		OSWEGO	NY	13126-0000
Eric	Haines	36 Goodwin Dr.		Oswego	NY	13126
DOUGLAS	HALL	1818 ST. RTE. 3		STERLING	NY	13156-0000
KENNETH	HALL	15009 Juniper Hill Road		STERLING	NY	13156-0000
Alan	Hanley	17 Marsden Road		Mexico	NY	13114
SCOTT	HANLEY	232 S MAIN ST		RICHLAND	NY	13144-0000
CHRISTOPHER	HANSEL	636 CO. RT. 53		OSWEGO	NY	13126-0000
MELVIN	HANSEN	69 GOODFELLOW ROAD		FULTON	NY	13069-0000
PAUL	HANSON	8755 New Country Drive	Apt. #6	Cicero	NY	13039
Dean	Harper	3886 Co. Rt. 6		Oswego	NY	13126-0000
Tyler	Harriman	434 Middle Rd.	Apt. 1A	Oswego	NY	13126
TRAVIS	HARTFORD	17 WEST 10TH ST.		OSWEGO	NY	13126-0000
Ricky	Harvey	58 E. 8th St.		Oswego	NY	13126
KEVIN	HATTER	2341 CO. RT. 4		FULTON	NY	13069-0000
WILLIAM	HAYDEN	519 FREMONT STREET		FULTON	NY	13069-0000
D WILLIAM	HAYNES	3243 MAIN STREET		MEXICO	NY	13114-0000
Mark	Haynes	143 Button Rd.		Lacona	NY	13083
RANDY	HAYNES	PO BOX 1062		MEXICO	NY	13114-0000
Gregory	Hein	200 Water St Apt 5A		Oswego	NY	13126

DAVID	HENDERSON	3102 CO RT 57		OSWEGO	NY	13126-0000
DANIEL	HENDRICKS	7234 ST. RT. 104		OSWEGO	NY	13126-0000
Daniel	Henry	321 W. 3rd St.		Oswego	NY	13126
Jeremy	Herr	23 Murray St.		Oswego	NY	13126
Michael	Herrald	109 March Road		Oswego	NY	13126
Troy	Hess	4 Jay Lane		Phoenix	NY	13135
MICHAEL	HIGGINS	809 MIDDLE RD.		OSWEGO	NY	13126-0000
Jesse	Hill	239 E 10th St		Oswego	NY	13126-0000
ROBERT	HILL	75 FURNISS RD.		OSWEGO	NY	13126-0000
Timothy	Hogan	263 O'Connor Road		Oswego	NY	13126
KEVIN	HOLLIDAY	261 WEST 4TH ST.		OSWEGO	NY	13126-0000
Shane	Hughes	508 Phillips St		Fulton	NY	13069
DARREL	HUNTER	3923 CO RT 4		OSWEGO	NY	13126-0000
Andrew	Huntington	13233 Ridge Road		Wolcott	NY	14590
GERALD	INCH	PO BOX 91		HANNIBAL	NY	13074-0000
Benjamin	Izard	70 Co. Rt. 1a		Oswego	NY	13126-0000
David	Izyk	62 Simpson Drive		Oswego	NY	13126
MICHAEL	JADUS	16 CATHERINE STREET		OSWEGO	NY	13126-0000
Nicholas	Jadus	16 Catherine St		Oswego	NY	13126
Christopher	Jock	2547 County Route 7		Oswego	NY	13126
JUSTIN	JOHNSON	853 DUTCH RIDGE RD		OSWEGO	NY	13126-0000
MICHELLE	JOHNSON	2657 STATE ROUTE 3 F 14		FULTON	NY	13069-0000
Cory	Jones	1814 Parkhurst Rd.		Sterling	NY	13156
MARK	JONES	785 DUTCH RIDGE ROAD		OSWEGO	NY	13126-0000
MICHAEL	JORDAN	4012 EAST MAIDER ROAD		CLAY	NY	13041-0000
YAO	KANGAH	115 WEST ONEIDA STREET		OSWEGO	NY	13126-0000
Maurice	Kellison	329 Maple St.	Apt. 24	Oswego	NY	13126
Johnathon	Kemp	329 Stoney Robby Road		Oswego	NY	13126
Matthew	Kenyon	42 Chapel Road		Hannibal	NY	13074-0000
KYLE	KIMBALL	188 CO. RT. 6		PHOENIX	NY	13135-0000
ARNOLD	KING	3537 Co. Rt. 4		OSWEGO	NY	13126-0000
Robert	Kingsley	8 Tallman St		Oswego	NY	13126
Jennifer	Kline	33 Catherine St.		Oswego	NY	13126
Burt	Knight	35 New Street		Oswego	NY	13126-0000

GERARD	KNIGHT	8139 MAPLE ROAD		CLAY	NY	13041-0000
EUGENE	KNOPP	98 ONTARIO ST		OSWEGO	NY	13126-0000
JEFFREY	KNOPP	274 GEORGE WASHINGTON BLVD		OSWEGO	NY	13126-0000
ELMER	KONU	220 DARROW ROAD		MEXICO	NY	13114-0000
ERIC	KOSBOB	4178 COUNTY ROUTE 4		OSWEGO	NY	13126-0000
FRANCIS	KOSKOWSKI	15400 FARDEN RD.		STERLING	NY	13156-0000
JAMES	KRAY	172 E MOHAWK ST		OSWEGO	NY	13126-0000
DAVID	KUHL	72 BAITSELL DRIVE		OSWEGO	NY	13126-0000
ROBERT	KUNELIUS	7377 STATE ROUTE 104		OSWEGO	NY	13126-0000
STEVEN	KUSH	14041 COSGROVE ROAD		STERLING	NY	13156-0000
Craig	LaCelle	337 Jackson Rd.		Richland	NY	13144
LEWIS	LACLAIR	434 Middle Road	Cabin 2B	Oswego	NY	13126
GEORGE	LAGOE	1287 CO. RT. 53		OSWEGO	NY	13126-0000
JAMES	LAGOE	1718 RATHBURN RD.		OSWEGO	NY	13126-0000
Richard	Lagoe	160 East 13th St.		Oswego	NY	13126-0000
Richard	Lagoe	395 O'connor Rd.		Oswego	NY	13126-0000
STEPHEN	LAMB	701 MAPLE AVE.		FULTON	NY	13069-0000
BRANDON	LANE	894 Co. Rt. 1		OSWEGO	NY	13126-0000
MARK	LARKIN	315 WORTH ST.		FULTON	NY	13069-0000
JOHN	LARSON	70 Hurlbut Road		Mexico	NY	13114-0000
Matthew	LaRue	1802 Co. Rt. 45		Fulton	NY	13069
Nicole	Lautensack	161 West 4th Street		Oswego	NY	13126
Jonathan	Laux	214 Baum Rd.		Hastings	NY	13076
GREGORY	LAVERE	643 CO. RT. 25		OSWEGO	NY	13126-0000
NICHOLAS	LAVERE	234 JOE FULTZ BLVD.		OSWEGO	NY	13126-0000
Kyle	Lawton	253 Whittemore Road		Oswego	NY	13126
Andrew	Lazzaro	129 O'Connor Rd.		Oswego	NY	13126
MICHAEL	LAZZARO	209 EAST 9TH ST.		OSWEGO	NY	13126-0000
JOHN	LEE	139 Hillside Ave.		OSWEGO	NY	13126-0000
Michael	Levison	46 HERRICK STREET		OSWEGO	NY	13126-0000
Mark	Lewis	271 State Route 104A		Oswego	NY	13126
Michael	Lighthall	2862 St. Rte. 370		Cato	NY	13033
JAMES	LILLIS	6500 MARRA LANE		CICERO	NY	13039-0000
Joseph	Livoti	101 County Route 51		Mexico	NY	13114-0000

PAUL	LIVOTI	22 MCCRACKEN DRIVE		OSWEGO	NY	13126-0000
CHRISTINE	LLOYD	1413 CO. RT. 1		OSWEGO	NY	13126-0000
JOANNE	LONGLEY	1684 ONIONVILLE RD.		STERLING	NY	13156-0000
David	Losurdo	1079 Skyline Drive		Oswego	NY	13126
Peter	Losurdo	62 Co. Rt. 1a		Oswego	NY	13126-0000
SAMUEL	LOSURDO	116 W. 7TH ST.		OSWEGO	NY	13126-0000
ROBERT	LOUGHREY	PO Box 357		OSWEGO	NY	13126-0000
James	Love	45 West 5th Street South		Fulton	NY	13069-0000
Christopher	Lupa	43 Gerritt St.		Oswego	NY	13126
Brian	Lynch	4285 Old Meadow Rd.		Clay	NY	13041
TERRY	LYON	161 EAST 13TH STREET		OSWEGO	NY	13126-0000
ANDREW	MacArthur	497 MAIDEN LANE		RED CREEK	NY	13143-0000
DARRON	MADURA	9406 EAST MUD LAKE RD.		FULTON	NY	13069-0000
Michael	Mahar	2243 Mott Rd		Baldwinsville	NY	13027
Kenneth	Majchrzak	25 Tappan St.	Apt. 1	Baldwinsville	NY	13027
MICHAEL	MALONE	262 HALL RD.		HANNIBAL	NY	13074-0000
PETER	MALONE	35 Hannum Rd.		Hannibal	NY	13074
WILLIAM	MANCHESTER	1670 WHIRLWIND RD		GREENEVILLE	TN	37743-7934
Sean	Mandurano	53 East Van Buren Street		Oswego	NY	13126
TIMOTHY	MANSFIELD	2072 COUNTY ROUTE 6		FULTON	NY	13069-0000
Andrew	Marshall	36 Harbor Brook Drive		Oswego	NY	13126
CHRISTIAN	MARSHALL	322 THOMPSON ROAD	H11	OSWEGO	NY	13126-0000
Roy	Marshall	36 Harbor Brook Dr		Oswego	NY	13126
JAMES	MARTIN	11 OLD STATE RD.		FULTON	NY	13069-0000
MYRON	MARTIN	189 NINE MILE PT. RD.		OSWEGO	NY	13126-0000
VICTOR	MARTIN	119 WEST 4TH ST.		OSWEGO	NY	13126-0000
Mario	Martinez	185 Duer St		Oswego	NY	13126
BRIAN	MASUICCA	37 KENNEDY AVENUE		OSWEGO	NY	13126-0000
Terrance	Mayville	13885 Furnace St.		Red Creek	NY	13143
Craig	Maxfield	324 GEORGE RD.		MEXICO	NY	13114-0000
PATRICK	MCCAREY	183 East Albany St.		Oswego	NY	13126-0000
LUCAS	MCCOY	159 ACADEMY STREET		MEXICO	NY	13114-0000
Steven	McCrobie	68 West 8th St		Oswego	NY	13126
Anthony	McDermott	14491 West Bay Road		Sterling	NY	13156

JASON	MCDERMOTT	22 Boothe Rd.		OSWEGO	NY	13126-0000
Richard	Mcdermott	491 Albion Cross Road		Pulaski	NY	13142-0000
WILLIAM	MCINTYRE	14601 LAKE ST.		STERLING	NY	13156-0000
BRIAN	MCKINSTRY	34 BUTTERNUT DR.		OSWEGO	NY	13126-0000
RICHARD	MCLAUGHLIN	20 ELLEN STREET		OSWEGO	NY	13126-0000
JAMES	MCMANUS	131 MIDLAND AVE		OSWEGO	NY	13126-0000
Michael	Mcmanus	1020 MIDDLE ROAD		OSWEGO	NY	13126-0000
WILLIAM	MEEK	PO BOX 55		NEW HAVEN	NY	13121-0000
NATHAN	MERRITT	32 LAZZARO LANE		OSWEGO	NY	13126-0000
RONALD	MERZ	127 EAST ALBANY STREET		OSWEGO	NY	13126-0000
Joseph	Micheletti	128 Huntley St		Syracuse	NY	13208
STEPHEN	MIECZKOWSKI	14359 MARTVILLE RD.		MARTVILLE	NY	13111-0000
Brianna	Miller	119 Clifford Road		Fulton	NY	13069
STEPHEN	MILLER	28 LANE DR		OSWEGO	NY	13126-0000
DERRICK	MILLS	110 MAIDEN LANE		OSWEGO	NY	13126-0000
WILLIAM	MITCHELL	107 East Mohawk St.		Oswego	NY	13126
JAMIE	MOLTRUP	4596 Verplank Rd.		Clay	NY	13041
Kristian	Moody	70 Grove St.		Massena	NY	13662
JEFFREY	MOSIER	5365 St. Rt. 289		Mannsville	NY	13661
MICHAEL	MULLEN	487 PARADISE RD		CENTRAL SQUARE	NY	13036-0000
SHAUN	MULVIHILL	19 Dublin St.		OSWEGO	NY	13126-0000
LUKE	MURPHY	289 Chestnut Street		OSWEGO	NY	13126-0000
EDWARD	MURRAY	PO BOX 5197		OSWEGO	NY	13126-0000
RAYMOND	MYERS	PO BOX 176		FULTON	NY	13069-0000
WILLIAM	MYERS	51 Franklin Ave.		Oswego	NY	13126
KENNETH	NASSOIY	492 MANWARING RD.		PULASKI	NY	13142-0000
Brandon	Natoli	42 Kennedy Dr		Oswego	NY	13126
Samuel	Natoli	42 Kennedy Drive		OSWEGO	NY	13126-0000
GEORGE	NEFF	497 O'Connor Rd.		OSWEGO	NY	13126-0000
ROBERT	NEVILLS	1499 CO. RT. 48		LACONA	NY	13083-0000
MICHAEL	NIVER	1669 STATE ROUTE 48		FULTON	NY	13069-0000
Louis	Norris	PO Box 147		Minetto	NY	13115
Troy	Norton	3313 Co. Rt. 176		Oswego	NY	13126
ROBERT	NOYES	1076 MIDDLE ROAD		OSWEGO	NY	13126-0000

RYAN	O'GORMAN	204 Woolson Road		OSWEGO	NY	13126-0000
CHARLES	OLEYOURRYK	30 MORGAN DRIVE		OSWEGO	NY	13126-0000
SEAN	OLSEN	198 E. Albany St.	Apt. 3A	OSWEGO	NY	13126-0000
ERIC	OLSON	873 CO. RT. 21		HANNIBAL	NY	13074-0000
Clarence	Ouderkirk	490 Co. Rte. 16		Mexico	NY	13114-0000
Mark	Palermo	14537 Richmond Ave.		Sterling	NY	13156
Michael	Palmitesso	91 Murray Street		Oswego	NY	13126-0000
DENNIS	PARKER	1116 CO. RT. 41		PULASKI	NY	13142-0000
Raymond	Parker	829 County Rt. 10		Pennellville	NY	13132
Charles	Parkhurst	294 NINE MILE POINT ROAD		OSWEGO	NY	13126-0000
KEVIN	PARKHURST	1262 CO RT 1		OSWEGO	NY	13126-0000
Nicholas	Parkhurst	550 West 1st St.	Apt. 404	Oswego	NY	13126
KEVIN	PARSONS	14579 LAKE ST.		STERLING	NY	13156-0000
VINCENT	PASCUZZI	57 LIBERTY STREET		OSWEGO	NY	13126-0000
Christopher	Pastuf	59 Mulroney Drive		Mallory	NY	13103
DAVID	PATTY	2571 ST. Rt. 48	PO Box 222	MINETTO	NY	13115-0000
PHILIP	PAULING	5088 COUNTY ROUTE 97		ADAMS	NY	13605-0000
Andrew	Peets	15 Catherine Street		Oswego	NY	13126
JOSHUA	PEETS	15 Catherine St.		OSWEGO	NY	13126-0000
MARK	PEMBERTON	1189 CO. RTE. 1		OSWEGO	NY	13126-0000
DAVID	PENSERO	12 MEANEY CIRCLE		OSWEGO	NY	13126-0000
Zachary	Pensero	12 Meaney Circle Ext.		Oswego	NY	13126
ADAM	PERRY	77 WEST 3RD STREET		OSWEGO	NY	13126-0000
LESTER	PERRY	36 WEST 5TH. ST. SOUTH		FULTON	NY	13069-0000
Noah	Personius	1536 Connors Rd		Baldwinsville	NY	13027
Tyler	Peter	31 East Hollis Tract		Pulaski	NY	13142
Daniel	Peterson	149 Kendall Dr West		East Syracuse	NY	13057
CHAD	PHELPS	3530 CO. RT. 6		MEXICO	NY	13114-0000
JAMES	PHOTOS	53 SABIN RD		OSWEGO	NY	13126-0000
Brandon	Pitcher	34 West 3rd Street	Apt #2	Oswego	NY	13126
RAYMOND	PLACE	280 EAST SECOND STREET		OSWEGO	NY	13126-0000
Michael	Pluff	79 East Mohawk St.		Oswego	NY	13126
David	Pope	PO Box 55		Lycoming	NY	13093
Robert	Porter	8275 ST. RT. 3		PULASKI	NY	13142-0000

CHARLES	POTTER	26 BROOKWOOD DRIVE		OSWEGO	NY	13126-0000
James	Priest	146 Canfield Rd.		Parish	NY	13131-0000
BRIAN	PRITCHARD	1722 LAXTON ROAD		STERLING	NY	13156-0000
GERRY	PRITCHARD	304 BARKER ROAD		OSWEGO	NY	13126-0000
JARED	PRITCHARD	1557 CO. RT. 7		OSWEGO	NY	13126-0000
Justin	Pritchard	2450 Co. Rt. 7	Apt. A	Oswego	NY	13126
Ricky	Pritchard	217 Demass Rd.	Apt. 4F	Oswego	NY	13126
JEREMY	PROSSER	75 SHORE OAKS E.		OSWEGO	NY	13126-0000
GUILLERMO	QUINTANA	433 Co. Rt. 13		Lacona	NY	13083
Bernard	Race	5 Mohawk Terrace		Oswego	NY	13126
BRIAN	RANDALL	15679 ST. RT. 104		MARTVILLE	NY	13111-0000
TODD	RASBECK	175 MUD LAKE RD.		MEXICO	NY	13114-0000
DAVID	RAYMOND	204 MERRIT ROAD		FULTON	NY	13069-0000
MARK	RAYMOND	3900 ST. RT. 3		FULTON	NY	13069-0000
ROBERT	REED	135 WEST 4TH ST.		OSWEGO	NY	13126-0000
Theodore	Reifke	215 O'Connor Rd.		Oswego	NY	13126
John	Reinhardt	3720 Everts Rd.		Cato	NY	13033
Kevin	Reitz	124 West Schuyler St.		Oswego	NY	13126
Joshua	Reynolds	816 Utica St.		Fulton	NY	13069
Steven	Reynolds	3939 CO. RT. 4		OSWEGO	NY	13126-0000
Clayton	Rice	212 Lily Marsh Rd		Mexico	NY	13114
BRIAN	RICHARDSON	12 WELLER ROAD		FULTON	NY	13069-0000
JOHN	RINALDO	P.O. BOX 290		MINETTO	NY	13115-0000
Lisa	Roberts	162 Creamery Road		Oswego	NY	13126
William	Robinson	1001 Co. Rt. 20		Oswego	NY	13126-0000
THOMAS	ROLLIN	1428 CO. RT. 53		OSWEGO	NY	13126-0000
KEVIN	ROOD	515 CO. RT. 41		MEXICO	NY	13114-0000
BRIAN	ROOKEY	202 HAWK ROAD		FULTON	NY	13069-0000
Leo	Rookey	27 Lincoln Avenue		Mexico	NY	13114-0000
JASON	ROY	13 CO. RT. 31		OSWEGO	NY	13126-0000
ROBERT	ROY	3617 CO. RT 57		OSWEGO	NY	13126-0000
Gregory	Rudes	1163 Co. Rt. 8		Fulton	NY	13069
ANDRES	RUIZ	109 WEST FIRST ST. S		FULTON	NY	13069-0000
Jeffrey	Russell	53 Woodview Drive		Parish	NY	13131

VINCENT	RUSSO	371 Darrow Rd.		MEXICO	NY	13114-0000
STEPHEN	RUTTAN	15 Co. Rt. 6A		OSWEGO	NY	13126-0000
Paul	Sacco	3509 Lightfoot Lane		Baldwinsville	NY	13027
Kevin	Salladin	1344 County Route 8		Fulton	NY	13069
MICHAEL	SANFORD	840 CO. RTE. 53		OSWEGO	NY	13126-0000
Edward	Sapps	401 Kenwick Dr		Syracuse	NY	13208
LORI	SAWYER	1025 RATHBURN RD.		OSWEGO	NY	13126-0000
ROBERT	SAWYER	295 WOOLSON ROAD		OSWEGO	NY	13126-0000
CAREY	SCACCIA	69 BRONSON ST.		OSWEGO	NY	13126-0000
Jerry	Scaggs	321 Goodfellow Rd.		Fulton	NY	13069
THOMAS	SCANLON	22 CO. RT. 85		FULTON	NY	13069-0000
Joseph	Schleicher	356 Baldwin Road		Fulton	NY	13069-0000
Andrew	Schneider	319 State Route 104A		Hannibal	NY	13074
JOSEPH	SCHULTZKIE	10 SUNRISE DRIVE		OSWEGO	NY	13126-0000
Todd	Scruton	12639 Upton Road		Red Creek	NY	13143-0000
Joseph	Seinoski	1874 County Route 1		Oswego	NY	13126-0000
SCOTT	SEINOSKI	310 Kingdom Rd.		OSWEGO	NY	13126-0000
JOHN	SEMERARO	1753 CO. RTE. 6		FULTON	NY	13069-0000
MARK	SHARKEY	8217 Ford Road		Red Creek	NY	13074-0000
Frederick	Shattell	63 Floridaville Road		Fulton	NY	13069-0000
CHRYSTAL	SHEFFIELD	18 Byrns Road		OSWEGO	NY	13126-0000
AARON	SHELDON	482 HOWARD RD.		FULTON	NY	13069-0000
Michael	Sheldon	146 CO. RT. 63		OSWEGO	NY	13126-0000
JESSICA	SHEPHARD	191 HADLEY RD.		SANDY CREEK	NY	13145-0000
Kimberly	Sherman	PO BOX 16		MARTVILLE	NY	13111-0000
WILMA	SHERMAN	14042 KEELEY ST.		RED CREEK	NY	13143-0000
JAMES	SHORTSLEF	8548 ST. RT. 104		HANNIBAL	NY	13074-0000
Joshua	Shortslef	253 Co. Rt. 21		Martsville	NY	13111
KEVIN	SHORTSLEF	1392 OLD STATE ROAD		STERLING	NY	13156-0000
LYNN	SHORTSLEF	1422 OLD STATE RD.		STERLING	NY	13156-0000
Calvin	Shumway	1662 Co. Rt. 4		Central Square	NY	13036
JONATHAN	SHUMWAY	3655 CO RT 6		OSWEGO	NY	13126-0000
BRENDA	SINGLETARY	95 GARDEN DRIVE		OSWEGO	NY	13126-0000
Ellis	Singleton	2554 Co. Rt. 7		Oswego	NY	13126-0000

Homer	Sixberry	106 O'connor Road		Oswego	NY	13126-0000
William	Skinner	162 W Seneca St		Oswego	NY	13126
Sarah	Slater	330 Stewarts Corners Road		Pennellville	NY	13132
EDWARD	SLIGHT	72 THIRD AVE.		OSWEGO	NY	13126-0000
TIMOTHY	SMEGELSKY	3244 CO. RT. 57		OSWEGO	NY	13126-0000
ANNE	SMITH	356 PARK STREET		FULTON	NY	13069-0000
Caleb	Smith	PO Box 332		Parish	NY	13131
Charles	Smith	21 Whitewood Tract		Phoenix	NY	13135-0000
DEREC	SMITH	798 O'CONNOR RD.		OSWEGO	NY	13126-0000
James	Smith	1323 County Route 53		Oswego	NY	13126-0000
JOSHUA	SMITH	784 CO. RT. 33		CENTRAL SQUARE	NY	13036-0000
MARK	SMITH	25 CREAMERY RD.		OSWEGO	NY	13126-0000
BRIAN	SOLAZZO	1810 CO. RT. 1		OSWEGO	NY	13126-0000
BRETT	SOMERS	3647 CO. RT. 57		OSWEGO	NY	13126-0000
MICHAEL	SOMERS	386 CO. RT. 7		HANNIBAL	NY	13074-0000
RICHARD	SOMERS	2105 CO. RT. 7		OSWEGO	NY	13126-0000
SCOTT	SOMERS	7 CO. RT. 42		OSWEGO	NY	13126-0000
Worden	Somers	14035 Wilde Rd.		Martville	NY	13111-0000
TIMOTHY	SOUTHWORTH	142 RIDGE ROAD		FULTON	NY	13069-0000
DAVID	SPEDDING	612 SENECA ST.		FULTON	NY	13069-0000
THOMAS	SPEDDING	4546 CO. RTE. 4		OSWEGO	NY	13126-0000
CHRISTOPHER	SPENCER	11225 St. Rt. 13	PO Box 33	WESTDALE	NY	13483-0000
James	Sperino	1158 Co. Rt. 20		Oswego	NY	13126-0000
Jon	Spier	96 Gildner Rd		Central Square	NY	13036
Nicholas	Spier	96 Gildner Rd.		Central Square	NY	13036
SCOTT	STAFFORD	489 COUNTY ROUTE 85		FULTON	NY	13069-0000
Jack	Stala	71 Kelly Dr.		Central Square	NY	13036
ROBERT	STANCLIFFE	PO Box 943		OSWEGO	NY	13126-0000
JOEL	STANITIS	1386 STATE ROUTE 176		FULTON	NY	13069-0000
JEREMY	STAURING	3580 COUNTY ROUTE 57		OSWEGO	NY	13126-0000
JUSTIN	STEVENS	96 Lamphere Road		Mexico	NY	13074-0000
MICHAEL	STILES	38 LAZZARO LN		OSWEGO	NY	13126-0000
Joseph	Stock	172 Distin Road		Oswego	NY	13126-5235
SEAN	STONE	947 SIMMONS RD.		STERLING	NY	13156-0000

Jon	Storms	346 So. James St.		Carthage	NY	13619
Aaron	Strother	16531 West Lake Rd.		Oswego	NY	13126
Robert	Stuart	236 East 7th Street		Oswego	NY	13126-0000
JASON	SUTTON	442 Co. Rt. 33		Pennellville	NY	13132
MICHAEL	SUTTON	7 SPRUCE LANE		WEST MONROE	NY	13167-0000
Richard	Sutton	PO Box 136		West Monroe	NY	13167
DONALD	SWAN	59 TALLMAN STREET		OSWEGO	NY	13126-0000
SCOTT	SWEET	1485 CO. RT. 57		FULTON	NY	13069-0000
Robert	Sweeting	PO Box 146		Sterling	NY	13156
William	Sweeting	PO Box 54		Oswego	NY	13126
ROBERT	SYRELL	31 EAST 10TH STREET		OSWEGO	NY	13126-0000
MARK	TAORMINA	63 GARDEN DRIVE		OSWEGO	NY	13126-0000
CARL	TAYLOR	13861 SHORTCUT ROAD		MARTVILLE	NY	13111-0000
Everett	Taylor	95 Ames Street		Mexico	NY	13114-0000
JERRY	TAYLOR	314 NINE MILE POINT RD.		OSWEGO	NY	13126-0000
MARK	TAYLOR	2929 CO. RT 45		FULTON	NY	13069-0000
Robert	Taylor	52 Sherman Dr.		Volney	NY	13069
MATTHEW	TEDFORD	8177 SALTZMAN ROAD		BLOSSVALE	NY	13308-0000
DUSTIN	TERRY	329 Maple Street	Apt. 36	Oswego	NY	13126
JOHN	TESORIERO	261 MAIDEN LANE RD.		OSWEGO	NY	13126-0000
Brian	Thomas	50 Gordon Parkway	Apt. 4	Syracuse	NY	13219
ERIC	THOMAS	205 DUNLAP RD.		MEXICO	NY	13114-0000
GREGORY	THOMAS	185 E. ONEIDA STREET		OSWEGO	NY	13126-0000
SCOTT	THOMPSON	8303 ST. RT. 104		OSWEGO	NY	13126-0000
Kevin	Tice	526 Dutch Ridge Road		Oswego	NY	13126
CHARLES	TOUROT	3677 ST. RT. 69		MEXICO	NY	13114-0000
DON	TOWSLEY	20 N. POLLARD DR.		FULTON	NY	13069-0000
ERIC	TRUELL	59 TWIN ORCHARDS DRIVE		OSWEGO	NY	13126-0000
GREGORY	TURNER	48 DOWNEY DR.		OSWEGO	NY	13126-0000
David	Upcraft	37 Stanley Ave.		Oswego	NY	13126
DONALD	UPCRAFT	551 66 ROAD		HANNIBAL	NY	13074-0000
TERRY	URQUHART	217 BARDEEN RD.		HASTINGS	NY	13076-0000
DAVID	VANDYKE	214 MEXICO POINT DRIVE		MEXICO	NY	13114-0000
BRIAN	VANELLA	3848 Co. Rt. 4		OSWEGO	NY	13126-0000

David	VanFleet	PO Box 461		Fair Haven	NY	13064
Jesse	Vanucchi	115 West 4th Street		Oswego	NY	13126
MATTHEW	VASHAW	268 WEST 2ND STREET	APT. A	OSWEGO	NY	13126-0000
ANTONIO	VAZQUEZ	205 MIDDLE RD.	LOT 25	OSWEGO	NY	13126-0000
JASON	VICKERY	37 TIFFT ST.		LACONA	NY	13083-0000
BRIAN	VICTORY	37 HILLCREST DR.		OSWEGO	NY	13126-0000
Brian	von Holtz	3490 Co. Rt. 6		Mexico	NY	13114
MARIA	VONO	8248 ST. RT. 104		OSWEGO	NY	13126-0000
Brian	Walker	127 Chapman Road		Mexico	NY	13114
JIMMY	WALKER	703 COUNTY ROUTE 13		LACONA	NY	13083-0000
Andrew	Wallace	830 Kingdom Road		Oswego	NY	13126-0000
GEOFFREY	WALLACE	125 MAIDEN LANE RD.		OSWEGO	NY	13126-0000
JERMEY	WALLACE	84 MARIPOSA DRIVE		OSWEGO	NY	13126-0000
Richard	Wallace	689 DUTCH RIDGE ROAD		OSWEGO	NY	13126-0000
Richard	Wallace	199 WOOLSON ROAD		OSWEGO	NY	13126-0000
JAMES	WALOVEN	344 CO. RT. 7		HANNIBAL	NY	13074-0000
Marc	Walton	12592 Ira Station Rd.		Martville	NY	13111
Michael	Warren	74 West Cayuga St.	Apt. 6	Oswego	NY	13126
JUSTIN	WATERS	153 W. 3RD ST. S.		FULTON	NY	13069-0000
JAMES	WATSON	417 Main Street		Phoenix	NY	13135
AMY	WATTS	13861 SHORTCUT ROAD		MARTVILLE	NY	13111-0000
Raymond	Watts	15330 St. Rt. 104		Martville	NY	13111
Steven	Watts	303 Worth St.		Fulton	NY	13069
Arthur	Webb	7030 State Route 104		Oswego	NY	13126
JAMES	WEBB	7646 MAPLE ROAD		BALDWINSVILLE	NY	13027-0000
Amanda	Weber	85 Fort Leazier Rd.		Mexico	NY	13114
GARY	WEBER	97 FORT LEAZIER RD.		MEXICO	NY	13114-0000
WAYNE	WEBER	85 FORT LEAZIER RD.		MEXICO	NY	13114-0000
Christopher	Weier	145 Co. Rt. 31		Oswego	NY	13126
TODD	WELLING	14086 WILDE ROAD		MARTVILLE	NY	13111-0000
Zachary	Welling	14086 Wilde Rd		Martville	NY	13111
ALEXANDER	WELLS	364 SW 8th St		OSWEGO	NY	13126
THOMAS	WELLS	806 COUNTY ROUTE 25		OSWEGO	NY	13126-0000
Grant	Wendt	41 Oswego Street Apt 150		Baldwinsville	NY	13027

Donald	West	7 W 5TH ST		OSWEGO	NY	13126-0000
JAMES	WHEELER	PO BOX 439		FAIR HAVEN	NY	13064-0000
STEPHEN	WHEELER	16505 HAGEN ROAD		LACONA	NY	13083-0000
JOHN	WHITCOMB	311 BLYTHE RD.		HANNIBAL	NY	13074-0000
DEAN	WHITE	46 HARBOR BROOK DRIVE		OSWEGO	NY	13126-0000
Jason	White	116 Oswego Street	Apt 19	Baldwinsville	NY	13027
ALAN	WILCOX	129 LAKESHORE RD.		FULTON	NY	13069-0000
Frank	Williams	54 Rathburn Rd		Fulton	NY	13069
Lamar	Williams	8153 Rizzo Drive		Clay	NY	13041
ROBERT	WISE	158 E. 2ND ST.		OSWEGO	NY	13126-0000
MATTHEW	WOOD	614 Ct. Rt. 51		OSWEGO	NY	13126-0000
Steven	Woods	67 W. Tallman St.	Apt. 1	Oswego	NY	13126
CHARLES	WOODWORTH	63 HARVEST DRIVE		OSWEGO	NY	13126-0000
BRIAN	WYMAN	229 E. 2nd St.		OSWEGO	NY	13126-0000
DANIEL	WYMAN	82 COLE ROAD		FULTON	NY	13069-0000
CHARLES	YABLONSKI	1 CATFISH DRIVE		OSWEGO	NY	13126-0000
WILLIAM	YAHNER	316 LOT 10 RD.		CENTRAL SQUARE	NY	13036-0000
THOMAS	YERDON	26 OLD STATE ROAD		FULTON	NY	13069-0000
ANTONIO	ZAIA	9 BANKRUPT ROAD		PHOENIX	NY	13135-0000
DAVID	ZAPPALA	7773 STATE RT 104		OSWEGO	NY	13126-0000
Albert	Zimmerman Jr	663 Co. Rt. 20		Oswego	NY	13126-0000
DAVID	ZUKOVSKY	13756 THOMPSON ROAD		MARTVILLE	NY	13111-0000
Zachary	Zukovsky	13756 Thompson Rd.		Martville	NY	13111
FREDERICK	ZYCH	110 EAST THIRD STREET		OSWEGO	NY	13126-0000

result demoted him from several positions in some time in --

JUDGE ROSAS: One of these days, social media -- enough time will elapse where social media itself will be a sufficient category. Just pointing to social media and nothing else.

MR. DUMBACHER: And they've asked for that, Your Honor.

JUDGE ROSAS: What's that?

MR. DUMBACHER: They've asked for that, as well

JUDGE ROSAS: Yeah. Yeah. But unfortunately it is not yet at that point. So --

MR. POWELL: Your Honor, if I may?

JUDGE ROSAS: So disparate treatment, you know, sometimes we have to draw analogies between, you know, somebody getting a slap on the wrist because he showed up for work late, you know, or somebody else who gets suspended because the utter profanity, somebody else who gets a counseling for threatening a supervisor, and so on. You know, this stuff can tend to be all over the place.

MR. POWELL: May I address the point?

JUDGE ROSAS: Go ahead.

MR. POWELL: Obviously all discipline is not relevant. You have attendance, quality of production, you know, tardiness, whether you're doing a sufficient quantity of work, all of those things are completely irrelevant to the circumstances involved with Mr. Abare. He was demoted from a crew leader job for a Facebook post where he referred to the

employees who voted against the Union as "fucktards." And he also called them -- and the also told them to "eat shit." The company determined that that conduct was against its, you know, expectations for a leader, a crew leader, and it demoted him from a crew leader position.

We have agreed to produce documents that are relevant to any discipline for behavioral issues of crew leaders, because that's why he was demoted. He was a crew leader.

Discipline that was given out to other employees who are not in crew leader positions would not be relevant because they wouldn't have a leadership position to have been affected.

MS. ROBERTS: Well --

MS. LESLIE: Your Honor, I would just also note, he was also demoted from other positions he held within the plant. He was in an EMT, he was on the fire squad, so it was not strictly limited to his leadership position.

JUDGE ROSAS: So he was a bargaining unit member who had a leadership position?

MR. POWELL: Correct.

JUDGE ROSAS: Is that right?

MR. POWELL: And Your Honor, with respect to the other -- the EMT and the fire safety positions, those positions are just committee positions. They don't have any pay associated with them. They're simply positions -- I mean, they're positions of responsibility, but -- and obviously are important in the plant

and I'm not going to suggest that they aren't because of the safety ramifications, but they don't have any impact on --

JUDGE ROSAS: You know what?

MS. ROBERTS: Well, I think that's not true --

JUDGE ROSAS: You know what? Hold on. Hold on.

MS. LESLIE: Your Honor, respectfully --

JUDGE ROSAS: Stop. Stop.

MS. LESLIE: -- he got his parking space --

JUDGE ROSAS: Stop. Stop. Stop.

MS. LESLIE: There's other evidence.

JUDGE ROSAS: When I say "stop," I need everybody to stop, okay?

Show me a manual with some provision, which I've not found one employer to come up with yet, that has a separate code of conduct or disciplinary process for leadership versus line employees.

I'm not going to go there. This is classic federal civil procedure, 26, broad scope, liberal construction of the request of what might lead -- what might potentially lead to admissible evidence. Again, this is not -- none of this is at that point where the General Counsel might even be able to put any of it into evidence, but what they're entitled to see.

Again, at the outset when I asked where this stuff is, if it's -- you know, one approach that I always strongly suggest, especially if we have an interlude in the case, is for the

his entire tenure there?

MS. ROBERTS: Well, I'm willing to, to the extent that this item is encompassed in his personnel file, and you're willing to provide that in its entirety --

JUDGE ROSAS: I mean, they're entitled, I think --

MS. ROBERTS: -- then I don't --

JUDGE ROSAS: -- to as a --

MS. ROBERTS: -- I can forego --

JUDGE ROSAS: -- you know, if we go to, you know, and I always use this common law term that nobody nowadays ever seems to be familiar with, the *res gestae*, you know, the day that -- that point at which the alleged infractions or, you know, occurred and then you know, adverse action flowed from that, what was he and what did he lose? You're entitled to know what that is.

MS. ROBERTS: Correct.

JUDGE ROSAS: I heard some exchange about, well, he was in leadership but he also had these other positions and so on.

MS. ROBERTS: Right. And I think --

JUDGE ROSAS: They're entitled to know what he had on that day so they can determine if he lost anything else. Maybe he had, you know, a key to the chairman's bathroom and he lost that. You know, I mean, they're entitled to know what adverse --

MR. POWELL: Not a problem.

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FILE NO: 77786.000004 [50788903]

May 16, 2014

Via Agency's Electronic-filing system located at www.nlrb.gov

Patricia E. Petock
Field Examiner
National Labor Relations Board, Region 3
130 S Elmwood Ave, Suite 630
Buffalo, NY 14202-2465

Re: Novelis Corporation: Case 03-CA-126738

Dear Ms. Petock:

As you know, this firm represents Novelis Corporation ("Novelis" or "Company"), in connection with the above-referenced charge filed by the United Steelworkers (the "Union").

Please accept this statement of position as Novelis' response to the above referenced charge and your letter dated April 24, 2014.[1] By filing this response, Novelis does not waive any of its legal defenses. For example, as the Company discovers additional specific facts relevant to this response, it may raise jurisdictional or procedural defenses as a complete or partial defense to the charges. Additionally, the Company explicitly reserves the right to supplement this response to address additional facts, allegations, or other matters as the circumstances may dictate.

Without waiving the foregoing or any rights, and in the interest of resolving this matter, the Company submits the following:

[1] This position statement is based on Novelis' investigation to date of the allegations contained in the Union's charges. Novelis expressly reserves the right to supplement, amend, correct or modify this position statement based upon subsequently acquired or discovered information. This position statement does not constitute an affidavit and is not intended to be used as evidence in any Board hearing or court proceeding in support of any allegation advanced by the Union. Additionally, this letter should not be construed or interpreted as waiving any defenses available to Novelis in responding to the Union's allegations. Further, nothing in this response may be used as an admission by Novelis in any administrative or judicial proceeding. Finally, Novelis requests that this position statement be afforded confidentiality to the extent permitted by law.

Exhibit C

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The Company's Response to the Specific Allegations

A. The Company's Demotion Of Everett Abare For Engaging In Unprofessional Conduct

In response to the Union's allegations regarding Everett Abare, the Company received reports from multiple non-supervisory employees that Mr. Abare had engaged in unprofessional and insulting behavior by making derogatory statements in a Facebook post. At no time did Company managers Andy Quinn (Human Resources Leader) and Greg DuFore (Cold Mill Unit Manufacturing Manager) or any other member of management engage in unlawful surveillance of Mr. Abare; rather, as noted, the issue came to management's attention through the expressed concerns of his fellow co-workers.

A review of Mr. Abare's Facebook post indicated that he called fellow employees "F*#TARDS" and told them to "Eat $hit" based on the fact that they had voted against Union representation. (*See* Exhibit A.) Mr. Quinn and Mr. DuFore then met with Mr. Abare on April 4, 2014, at which time Mr. Abare admitted that he had made the post and acknowledged his mistake.

At the time, Mr. Abare functioned as a shop floor leader as a Crew Leader and served as a member of the Oswego plant's important Fire Department and EMT squads and as a trainer. Each of these roles represents a position of leadership within the plant. On April 11, 2014, due to his highly unprofessional conduct and the concerns expressed about his willingness to help fellow employees in the event of an emergency, the Company removed Mr. Abare's Crew Leader designation and his role in the Fire Department and EMT squads and in training.

Despite the attempt to implicate the Company's social media policy, Mr. Abare was not removed from his leadership positions for violating the Company's social media policy or in retaliation for alleged exercise of Section 7 rights; rather, the Company removed him from those roles due to his use of discriminatory epithets directed toward those who had a different viewpoint than his own. The removal of leadership roles would have occurred regardless of whether the action took place through social media, or some other means, as Mr. Abare's conduct violates both the Company's Code of Conduct policy applicable to all communications and common decency. Further, calling co-workers "F*#TARDS" and telling them to "Eat $hit" is neither protected nor concerted activity.

The Board should reject the invitation to advance the interests of an individual who engaged in such appalling behavior. This is not acceptable behavior from a Novelis leader,

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and the United States Congress certainly did not intend for such to be concerted or protected activity.

B. The Company Did Not Unlawfully Promise to Remedy Grievances

In response to the Union's allegation that on February 15, 2014, the Company threatened to withhold improvements in working conditions if the Union was voted in and blamed the Union for making it withhold improvements, the Company denies making any such threat. Moreover, based upon your April 28, 2014 letter, it does not appear that the Union adduced any facts in support of this allegation.

As to the allegation that Mr. Quinn solicited employees' grievances and promised to remedy them by asking employees "how they felt about the current situation" and promising that "things may not be as good as they were, but they will be better than they are now," the Company also denies these allegations. Mr. Quinn never unlawfully solicited and promised to remedy grievances and the alleged statements, even if true, do not constitute unlawful solicitation of grievances when put into the context of the Company's longstanding and ongoing employee communication practices which existed regardless of Union activity. Further, the Company's communications consistently encouraged employees to vote, regardless of their views.

C. The Company Did Not Unlawfully Grant Benefits

The Company also denies the Union allegation that the Union recently alleged that the Company granted employees a benefit, Sunday premium pay, in response to the union organizing campaign. Contrary to the Union's allegations, the Company's actions were both consistent with past practice and made before the Union demanded recognition and filed a petition for an election. Initially, the Company first announced certain policy changes in May 2013, well before the union organizing campaign. At that time, the Company solicited and received negative employee feedback and agreed to delay implementation of all changes until January 1. In December 2013, consistent with its past practice of meeting with employees every December to announce the compensation and benefits package for the upcoming year, the Company announced and solicited employee feedback to certain changes during a series of 11 employee meetings. During these meetings, the Company again received negative reaction to certain policy changes. As a result, on December 20, the Company committed to respond to the employee feedback after January 1. (*See* Exhibit B.)

During and following the holiday season, the Company considered the employee feedback as to the policy changes. On January 6 (*see* Exhibit C) and January 9, before the

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Company received any notice of a union petition or demand for recognition, the Company announced that it would not implement some of the announced policy changes while others would be implemented as previously announced.

Any suggestion that the Company granted the employees a benefit in response to the union organizing campaign is meritless, as the Company made such changes consistent with its longstanding practice of listening to employee feedback and making adjustments as appropriate based on such feedback. It is not unlawful for the Company to continue its past practice of obtaining employee feedback and responding to that feedback. The Company had done so on numerous occasions before it had knowledge of union activity and the Company's actions in January 2014 were the result of an ongoing communications process and were no different than other examples of adjustments or changes made in the past. Further, during the campaign, the Union took credit for this change as a "victory" (*see* Exhibit D) and, according to the Union, it only recently filed an unfair labor practice charge advancing this allegation. It therefore can hardly be said that the alleged change adversely affected any employee or employee free choice during the election.

The Company believes that the Union's recent allegations (as with the previous allegations) are meritless. Accordingly, it requests that the Board dismiss this charge in its entirety. In the event you seek additional information regarding these allegations, however, please do not hesitate to contact me.

Sincerely,

Kurt Powell

Kurt A. Powell

RTD:
Attachments
cc: Kenneth L. Dobkin, Esq.
Robert T. Dumbacher, Esq.

EXHIBIT A

Like Comment Share

Everett Abare
3 hours ago

As I look at my pay stub for the 36 hour check we get twice a month, One worse than the other. I would just like to thank all the F*#KTARDS out there that voted "NO" and that they wanted to give them another chance...! The chance they gave them was to screw us more and not get back the things we lost....! Eat $hit "NO" Voters.....

10 Likes 3 Comments

Like Comment Share

EXHIBIT B

Cheryl Ascenzi

From: MFLDNTSP01@novelis.com
Sent: Friday, December 20, 2013 10:13 AM
Subject: Announcement - Business Update & Wage Meeting Follow-up

Announcement - Confidential

Click twisty to expand or collapse section

From Monday morning until Wednesday afternoon, Pete and I met with you and your fellow employees in a series of eleven meetings to give you an update on the business, inform you of your wage and compensation increases for next year, and answer your questions. While such a schedule is tiring, I truly enjoy the opportunity to personally share my thoughts with you and listen to your comments and questions.

At a time when Pete suggested that we are all experiencing change fatigue, I appreciated the demeanor of everyone. Although there were some direct questions which needed to be asked; without exception, the interactions among us were all respectful to one another. I believe this type of open and honest interchange is a true reflection of the culture that exists in our plant. It is that willingness to talk about issues and resolve them together that has made this plant successful for so many years. It makes me pleased to be back in Oswego.

As I indicated, I want to follow-up with you directly about the questions that were raised in the meetings. We listened to all of your feedback and through ongoing dialogue with our corporate partners I am pleased to announce that:

With regard to the **Vacation and Holiday Policy** and the impact on overtime [originally communicated in May], the changes will be effective **January 6, 2014** to coincide with the start of the payroll cycle, rather than mid-week on January 1.

Shortly after the first of the year, your MUM, Pete or I will meet with you to discuss in detail the balance of the questions asked. As always, we value your input about the impact of changes on our employees, just as you respect our need to make competitive changes. Our common goal is to continue to secure the long term job security of all the employees in Oswego.

As we work through the challenges and opportunities of the coming year, I hope you will continue to seek us out and express your opinions.

Please remain safe during the Holiday Season,

Chris Smith
Oswego Plant Manager

Cheryl Ascenzi

From: MFLDNTSP01@novelis.com
Sent: Monday, January 06, 2014 4:37 PM
Subject: Announcement - Hourly Lump Sum Payout & HSA

Announcement - Confidential

Click twisty to expand or collapse section

On-going Business Update & Wage Follow-up:

- In December we announced a 5% General Wage Increase for all full-time hourly pay grades, effective January 1, 2014 and three lump sum payouts: $1,000 in January 2014, $750 in June 2014 and $750 in December 2014.
- After listening to your feedback and through ongoing dialogue with our corporate partners we were able to navigate an extension of the former holiday pay and overtime practices for the New Years 2014 holiday, with the exception of Option C days (time off later with pay).
- We also followed-up with the announcement that CASH would move to the J-12 shift schedule beginning January 6, 2014. We had already committed to the J-12 schedule plant-wide for all of calendar year 2014, and we stated that if and when the business needs cause us to look at options, we would only do so in consultation with our employees and that we would provide significant advanced notice of any changes.

We are now pleased to confirm that **employees can designate all or a portion of their lump sum payouts to go directly into their Health Savings Account (HSA) tax-free**! This has significant positive financial benefits to the employee. In order to do so in time for the $1,000 payout on January 16, 2014, **PLEASE ACT NOW:**

If you wish all, or a portion, of your $1,000 lump sum payout to go tax-free directly into your Health Savings Account, email Karen.finch@novelis.com with the dollar amount to be sent to your HSA NO LATER THAN 10:00 am, THURSDAY, JANUARY 9, 2014. If you do not elect to redirect all, or a portion, of the lump sum payout to your Health Savings Account, you will receive a separate check on January 16, 2014.

Thank you for your continued questions and comments and for your patience as we follow-through on our commitment to provide you answers.

Chris Smith, Plant Manager and Pete Sheftic, Human Resources Manager

EXHIBIT D

YOUR UNIONS First Step Towards Victory!!

Novelis, in a message from Chris Smith, Plant Manager, announced today the "restoration" of some of the benefits they just took away from you. Specifically, premium pay for Sundays. The USW is elated that the Company made this move to rescind its "Take Away" tactics! Clearly, it shows how effective we can be when we stick together as ONE and demand the right to be treated fairly.

The United Steelworkers know that people are not short sighted, and are very intelligent. We know that people realize that without a contract these benefits can be taken away again tomorrow. All of you that have signed cards should be "DAMN PROUD" of this victory for yourselves. "You" are Clearly already acting like a "Union" However, this is only the beginning.

As we move forward in this campaign, the Company will use all of its tools to try to stay in complete control. They will spend "Millions" in an attempt to keep you Union free. Ask yourselves, why is that? They will hold up a blank sheet of paper and say, here would be your starting point. If they believed everything they are telling you, then why do they fear "US"

As this effort moves forward, remember it is not just about you. It is about your spouses and your children. It is about never having benefits ripped away from you again. It is about job security. It is about respect and dignity in the workplace. Its about "US"

As sweet as this first victory is, it means nothing if it is not in writing in an enforceable contract. As things stand now, the Company could change it again. Remember retirement benefits, vacation supplement pay, vacation accumulation time, and Medical benefits. As the Steelworkers say "STAND UP, FIGHT BACK!"

1-09-14

district court "must act in accordance with the general rules of equity." *Kaynard*, 633 F.2d at 2033. Installing the loser as the winner without clear evidence justifying such an action, puts employee confidence in the election process at risk. The election process will be viewed as a sham if the Company is forced to recognize the Union contrary to the election. In the event that the Board ultimately rules that a rerun election is warranted, permanent damage will have been done to the employees' confidence in elections because they will have no reason to believe that the result means anything. When determining whether the requested relief is "just and proper" and acting in accordance with the general rules of equity, the likelihood of harm to the employees' Section 7 rights and their confidence and trust in the Board and its election process must weigh against issuing the bargaining order.

For all the foregoing reasons, the Board's request for a bargaining under must be denied. Additionally, as discussed below, the Board's requests for other Section 10(j) relief should also be denied.

G. Other Section 10(j) Relief Is Not Warranted In Relation To the Demotion of Abare or the Company's Social Media Policy

1. The Demotion of Everett Abare

The Board seeks separate 10(j) relief for the Company's allegedly unlawful demotion of employee Everett Abare. Abare's demotion occurred approximately two months after the election. Obviously, conduct occurring after an election cannot be considered a practice that "undermined the union's majority strength" leading up to the election. *Kinney Drugs, Inc.*, 74 F.3d at 1431. Moreover, the Company's decision to demote a single employee out of a 600-employee unit in which 273 people supported the union nearly two months after the election certainly defeats any inference that its conduct was taken for the purpose of discouraging union support or would otherwise justify a bargaining order under Section 10(j). Accordingly, Abare's

demotion is irrelevant to the determination of the propriety of the bargaining order. The Board does not argue otherwise. Rather, the Board seeks separate 10(j) relief for his demotion in the form of reinstatement to his prior position. (Pet. at 15, ¶ 2(b).) Such relief should be denied because there is no reasonable cause to believe that Abare's demotion constituted an unfair labor practice and, moreover, such relief is not just or proper.

The Act does not interfere with an employer's right to discharge or discipline its employees unless such discharge or adverse action is caused by a discriminatory motive proscribed by the Act. "Section 8(a)(3) of the Act makes it an unfair labor practice for an employer to discriminate 'in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization....' An employer violates section 8(a)(3) by firing an employee for engaging in union activity. Similarly, an employer violates section 8(a)(3) by taking action against employees who engage in 'concerted' activity for their mutual aid and protection." *New York Univ. Med. Ctr. v. NLRB*, 156 F.3d 405, 411 (2d Cir. 1998) (internal citations omitted). "In the interpretation of this provision, the courts have been mindful of 'the employer's right to manage his enterprise.' Thus, the courts 'have consistently construed the section to leave unscathed a wide range of employer actions taken to serve legitimate business interests in some significant fashion, even though the act committed, may tend to discourage union membership.'" *Waterbury Cmty. Antenna, Inc. v. NLRB*, 587 F.2d 90, 96 (2d Cir. 1978) (citations omitted). The Act itself specifies that no order of reinstatement should be made where a discharge or demotion is for cause. *See* 29 U.S.C. § 160(c) ("No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."). The Second Circuit has recognized that "there is nothing

inherently discriminatory or destructive about the discharge of a single employee for cause, even if that employee is a union activist. It is well established that employees who are active in union affairs do not thereby obtain a special immunity from ordinary employment decisions." *Waterbury* at 97. If an employer asserts a business justification for the adverse action, a violation of the Act may only be found if (1) the reason put forward by the employer is pretextual, or (2) the employer was motivated by both valid and invalid reasons and the adverse action would not have occurred but for the employee's union activities. *Id.* at 98-99.

In the present case, it cannot be disputed that the Company's decision to demote Abare was justified by the legitimate business reason that Abare's conduct in posting his repugnant Facebook post was completely inappropriate and unacceptable behavior for a shopfloor leader, that it violated Novelis' Code of Conduct by not treating employees with respect, fairness, and dignity, that it was unprofessional and counter to proper employee conduct and Emergency Medical Services decorum, and that it demonstrated a failure to exercise sound judgment. [redacted] The severity of Abare's conduct is underscored not only by the offensive nature of his comment, which is an obvious slur directed at those with mental disabilities or impairments, but also by its threatening nature, which is amplified by the fact that he served in leadership roles (Crew Lead, Fire Department, EMT) that each involves an important safety component within the Oswego facility. [redacted] Further, despite the attempt to implicate the Company's social media policy, Mr. Abare was not removed from his leadership positions for violating the Company's social media policy or in retaliation for alleged exercise of Section 7 rights; rather, the Company removed him from those roles due to his use of discriminatory epithets directed toward those who had a different viewpoint than his own. [redacted] The removal of leadership

roles would have occurred regardless of whether the action took place through social media, or some other means, and regardless of Abare's pro-union activities, because Abare's conduct violated both the Company's Code of Conduct policy applicable to all communications and common decency. (*Id.*) Indeed, demoting rather than firing Abare reflects the Company's measured discipline.

Further, calling co-workers "F*#TARDS" and telling them to "Eat $hit" is neither protected nor concerted activity. To qualify as concerted activity, a conversation "must appear at the very least that it was engaged in with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees." *Mushroom Transp. Co. v. NLRB*, 330 F.2d 683, 685 (3rd Cir. 1964). "Activity which consists of mere talk must, in order to be protected, be talk looking toward group action." *Id.* In an Advice Memorandum issued by the Board, the Board has held that an employee's Facebook postings are not protected by the Act where they amount to an "individual gripe" and do not seek to initiate or induce coworkers to engage in group action. *See Wal-Mart*, Case 17-CA-25030, 2011 WL 3813084 (NLRB July 19, 2011). In its Advice Memorandum, the Board considered a Wal-Mart employee's Facebook posts and concluded that the employee did not engage in protected conduct and therefore that the employer did not violate the Act by disciplining him therefor. *Id.* Likewise, in the present case, Abare's Facebook post did not seek to initiate or induce coworkers to engage in group action and at most amounted to an individual gripe. Accordingly, his post was not protected activity and the Company did not violate the Act by disciplining him therefor. *Id.*; *see also Mushroom Transp.*, 330 F.2d at 685. The Court should reject the attempt to advance the interests of an individual who engaged in such appalling behavior. This is not acceptable

behavior from a Novelis leader, and the United States Congress certainly did not intend for such to be concerted or protected activity.

In sum, the evidence shows that there is no reasonable cause to believe that the Company violated Section 8(a)(3) of the Act by demoting Abare. The Company has set forth just cause for its action and there is no evidence that the cause given is pretext or that the demotion would not have happened but for Abare's status as a union supporter. Moreover, Abare's posts do not constitute protected activity and therefore the Company did not violate the Act by disciplining him based on such unprotected activity. As a result, the Board cannot establish reasonable cause necessary to establish a violation has occurred. Further, any such relief would not be just or proper because there is no showing that traditional board remedies would be ineffective. Accordingly, the requested relief for injunctive relief under § 10(j) requiring the Company to restore Abare to his prior positions is not warranted.

2. Social Media Policy

The Board also alleges that the Company's Social Media Policy presented to Abare at his disciplinary meeting is overly broad and inhibits employees' Section 7 rights. The Board does not allege that the Policy is an unfair labor practice that diminished its majority support or impacted the election, rather the Board seeks a separate Section 10(j) remedy for the Social Media Policy, specifically an injunction prohibiting Respondent from maintaining and enforcing the Policy. (Pet. at 15, ¶ 1(s).)

In determining whether a company rule or policy unlawfully interferes with an Employee's Section 7 rights, the Board applies the analysis set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB No. 75, 2004 WL 2678632 (NLRB 2004). Under *Lutheran Heritage*, if a work rule or policy explicitly restricts Section 7 rights, it is unlawful. *Id.* at *1. "If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION	
and	Cases: 03-CA-121293 03-CA-121579 03-CA-122766 03-CA-123346 03-CA-123526 03-CA-127024 03-CA-126738
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO	
NOVELIS CORPORATION Employer	
and	Case: 03-RC-120447
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO Petitioner	

CHARGING PARTY'S MOTION TO PRECLUDE EVIDENCE CONCERNING THE SUPERVISORY STATUS OF EMPLOYEE EVERETT ABARE

Pursuant to Section 102.24 of the Board's Rules and Regulations ("Rules"), Charging Party United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL-CIO ("Charging Party" or "Union") submits this motion to preclude Respondent Novelis Corp. ("Respondent" or "Novelis") from introducing evidence concerning the purported supervisory status of employee Everett Abare. For the reasons stated below, the motion should be granted.

ALJ Exh. 5(B)

At the hearing on October 3, 2014, Novelis attempted to place into the record evidence showing that Abare is a "supervisor" under section 2(11) of the Act. Such evidence is not admissible under Rule 402 of the Federal Rules of Evidence ("FRE") because it is "irrelevant." Evidence is "relevant" only if "the fact is of consequence in determining the action." Rule 401(b), FRE. Abare's purported supervisory status is not, however, an issue in the case because Novelis has not interposed such a defense, and it is too late to do so now.

Under Board law, supervisory status is an affirmative defense that must be pled. *Springfield Manor*, 295 NLRB 17, 17, n. 2 (1989) (respondent not permitted to defend against § 8(a)(3) allegation on basis of alleged discriminatee's supervisory status where its answer did not assert supervisory status as an affirmative defense and its belated motion to amend pleading was denied).

Respondent's answer plainly does not interpose Abare's purported supervisory status as an affirmative defense. At the hearing on October 3, counsel for Novelis identified various of Respondent's defenses as sufficient to place Abare's supervisory status at issue, but this line of argument is meritless. The first and third affirmative defenses amount to nothing more than general denials of wrongdoing, and the eighth affirmative defense is simply an assertion that Abare's ostensibly concerted activity was unprotected, not a claim that he was a statutory supervisor [G.C. Exh. 1(jj)].

Moreover, nothing in Novelis's lengthy course of conduct leading up to its announcement on October 3 apprised the General Counsel or the Charging Party of its position. On the contrary, the Stipulated Election Agreement, dated January 25, 2014, included operators and crew leaders, such as Abare, as employees eligible to vote in the proposed bargaining unit

[G.C. Exh. 10]. Likewise, Abare was listed as an eligible voter on the *Excelsior* List. [G.C. Exh. 11, p. 1]. Further, Novelis did not object to Abare's participation as an election observer on behalf of the Union [Tr. 587], notwithstanding that the Stipulated Election Agreement required every party observer to be a "nonsupervisory-employee" [G.C. Exh. 10 ¶ 10].

At the first day of hearing on July 16, 2014, during arguments concerning the permissible scope of the General Counsel's *subpoena duces tecum* for the disciplinary records of other employees, counsel for Novelis confirmed to Your Honor that Abare "was a bargaining unit member who had a leadership position" [Tr. 68]. Novelis gave no hint that it considered Abare to be a statutory supervisor or that its defense to the unfair labor practice charge involved such a claim. The opening statement offered on behalf of Novelis lacks any reference to Abare's now-contended supervisory status [Tr. 19-35].

Novelis's conspicuous failure to provide any such notice to the General Counsel and the Charging Party continued as witnesses were called and the evidentiary record was developed. During cross-examination of Abare on the third day of hearing, counsel for Novelis asked a smattering of questions that now could bear upon his supervisory status. In the face of objections on the ground of relevance to such questions, counsel for Novelis repeatedly avoided any assertion that the issue of Abare's supervisory status was an aspect of Respondent's defense [Tr. 497-98, 499, 500-01, 502-03, 507-09, 511, 515]. Furthermore, despite Respondent's extensive cross-examination, numerous objections, and scrutiny over the representation cards authenticated by Abare, Respondent never raised the issue of supervisory status. [Tr. 295-436].

Respondent then proceeded to call numerous witnesses and put substantial testimony on the record from Novelis employees who were crew leaders, all without ever raising the issue of supervisory status. Counsel for the General Counsel and Charging Party were denied any opportunity to object to testimony or to cross-examine these witnesses with the understanding that their supervisory status was in question. The exploration on multiple issues — ranging from attendance of union meetings, to distribution of literature, to statements made during the campaign — would have undoubtedly been altered had this defense been raised with proper notice.

Under these facts and circumstances, it cannot be reasonably argued that Novelis has put the issue of supervisory status of Abare into play. It was not pled and it has not been fairly litigated.

And, neither has the proposed defense been seasonably raised. Any request by Novelis to amend its answer to add Abare's supervisory status as an affirmative defense should be denied. The question whether a respondent may amend its answer during the course of trial is within the discretion of the Administrative Law Judge ("ALJ"). Board Rules § 102.23.

Here, complaint was issued on May 6, 2014. The Respondent's amended pleading is dated June 15, 2014 [G.C. Exh. 1(jj)]. The hearing opened on July 16, 2014. There have been fourteen days of hearing testimony (July 17-18, 21-23, September 8-9, 11-12, 29-30 and October 1-3). The General Counsel has concluded his own case-in-chief and the Respondent has put on most of its defense. It would be unfair and prejudicial to permit the Respondent to amend its answer to add an unlitigated affirmative defense at this late date.

It would therefore be well within the bounds of Your Honor's discretion to deny this eleventh hour change-of-position. *See St. George Warehouse, Inc.*, 349 NLRB 17, 17, 26-27 (2007) (affirming ALJ's denial of respondent's motion to amend its answer to deny an employee's supervisory status where complaint clearly put respondent on notice and its motion was made after one and one-half days of trial); *Mingo Logan Coal Co.*, 336 NLRB 83, 83 (2001) (finding ALJ did not commit abuse of discretion in denying respondent's motion to amend its answer to deny employee's supervisory status not made until after first week of trial).

Accordingly, the Charging Party respectfully moves for an order precluding Novelis from introducing evidence that purports to show Abare was a statutory supervisor.

Dated: October 10, 2014

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

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CERTIFICATE OF SERVICE

I certify that on the 10th day of October 2014, I caused the foregoing to be filed with Administrative Law Judge Michael Rosas by email at michael.rosas@nlrb.gov and a copy of the same to be served by email on the following parties of record:

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UNITED STATES OF AMERICA
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03-CA-123526
03-CA-127024
03-CA-126738

NOVELIS CORPORATION

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

Case: **03-RC-120447**

RESPONDENT'S BRIEF REGARDING ADMISSIBILITY OF EVIDENCE ESTABLISHING EVERETT ABARE'S SUPERVISORY STATUS

I. INTRODUCTION

During the hearing on October 3, 2014, Respondent attempted to introduce evidence establishing that Oswego employee and crew leader Everett Abare, the Union's primary in-plant organizer and the only alleged Section 8(a)(3) discriminatee in the case, is a statutory supervisor under Board precedent. Respondent was not attempting – and does not intend – to establish that all crew leaders working at the Oswego plant are supervisors.

Despite having already elicited evidence suggesting Abare is a statutory supervisor during his own direct testimony, Counsel for the General Counsel and Charging Party objected to the introduction of further evidence about Abare's status on three grounds: (1) evidence that Abare is a statutory supervisor is not relevant to any issue in the case; (2) Respondent "waived" its right to pursue a statutory supervisor argument because it allegedly failed to preserve this

ALJ Exh. 5(C)

"affirmative defense" in its pleadings; and (3) allowing Respondent to introduce such evidence at this stage of the trial would "prejudice" the Board. Counsel for the General Counsel and the Charging Party are wrong on all counts.

First, evidence of Abare's supervisory status is unquestionably relevant for two equally important, but legally distinct, purposes. If Abare is a statutory supervisor, then: (1) the Company cannot have violated Section 8(a)(3) of the Act by demoting him; and (2) the union authorization cards Abare solicited are invalid under prevailing Board precedent and may not be considered in determining whether the Union established majority support. *See Harborside Healthcare, Inc.*, 343 NLRB 906 (2004). Accepting Counsel for the General Counsel's invitation to preclude evidence of Abare's supervisory status on the grounds it is not relevant would be plain error.

Second, Respondent did not "waive" its right to elicit evidence of Abare's status. In its Amended Answer, Respondent admitted that it demoted its employee Abare but specifically added as an affirmative defense that it did not take adverse action against any "employee under the Act." This defense is an obvious reference to the statutory definition of an "employee" under Section 2(3) of the Act and is the legally accurate manner in which to plead that Abare is not protected as an employee under the Act. Thus, a simple review of Respondent's Amended Answer demonstrates Respondent has preserved its right to introduce evidence of Abare's supervisory status. The Board requires only notice pleading and Respondent's Amended Answer plainly sets forth its intention to contest Abare's status as an "employee" under the Act. Moreover, Board precedent does not support a waiver of such defenses even when the party did not announce in an answer its intention to pursue them. Indeed, the Board has allowed amendments of pleadings deep into trial proceedings to "cure" such "deficiencies" in prior cases.

Further, Abare's status as a supervisor is a component of Respondent's ongoing defense to show that the union authorization cards are not evidence of majority support. Throughout this hearing, Respondent has elicited an abundance of evidence on that point without any suggestion from Counsel for the General Counsel that it "waived" the right to do so. Evidence that Abare's supervisory status affected the validity of certain union cards is no different as a legal matter from the extensive evidence already developed in the record relating to the manner in which many cards were obtained – including cards obtained by Abare himself. Respondent has been developing evidence as to the time, place and manner of card signing from numerous witnesses and has done so to develop evidence potentially relevant under *Harborside Healthcare Inc.*, 343 NLRB 906 (2004). That Respondent's intention to invoke *Harborside* to invalidate certain cards was not apparent to Counsel for the General Counsel earlier in the trial does not give rise to a finding Respondent "waived" the right to continue developing that evidence. Regardless, a challenge to a union's majority status is not a "defense" to any unfair labor practice such that it must be included in a responsive pleading anyway. And even if it was, Respondent's Amended Answer establishes it "preserved" its right to introduce evidence of Abare's supervisory status for this purpose as well.

Finally, Counsel for the General Counsel's claims of "prejudice" are beyond baseless. Its claim that it has been deprived of an opportunity to examine Respondent's crew leader witnesses on the supervisory issue is simply wrong. Respondent did not attempt to elicit testimony from its crew leader witnesses as to Abare's supervisory status, so any attempt to cross-examine those witnesses on supervisory issues would have been beyond the scope of direct examination – a principle Counsel for the General Counsel invoked, and the ALJ upheld, on myriad occasions during the Board's case-in-chief. Thus, Counsel for the General Counsel has not been deprived

of anything. They are free to explore the issue of Abare's supervisory status, and to recall every one of Respondent's crew leader witnesses, in their rebuttal case.

Counsel for the General Counsel's other contention – that by waiting until "late" in its case to put on evidence of Abare's supervisor status, Respondent frustrated their ability to consider earlier the potential implications of Respondent's theory – is also baseless. Foremost in this regard, Respondent has not waited to develop *Harborside* evidence; it has been doing so all along. Evidence of Abare's supervisory status is merely a continuation of that development. Respondent's order and manner of proof are up to Respondent, not the Board. Respondent is not required to present every defense or issue through every witness, and its choices regarding how to develop various defenses work no prejudice whatsoever against the Board.

What is most disingenuous about Counsel for the General Counsel's cries of foul, however, is that it has no intention of attempting to prove the supervisory status of all crew leaders or filing Section 8(a)(1) charges against Respondent based on the conduct of crew leaders who opposed the Union's organizing efforts. The Board investigated this matter for months before filing its Complaint and Counsel for General Counsel presented numerous crew leaders as witnesses in its case-in-chief, including Mr. Abare. If it wanted to pursue the claim that all crew leaders are supervisors and assert additional Section 8(a)(1) allegations based on that legal theory, it had every opportunity to do so during its case. Respondent's defense has no impact whatsoever on that litigation strategy decision. The Board, however, is well aware that any attempt to establish the supervisory status of Novelis' crew leaders would deal a self-inflicted and fatal blow to the Charging Party's alleged majority status under *Harborside*. The vast majority of cards signed were either solicited by crew leaders, or signed by them. Thus, Counsel

for the General Counsel's claim that Respondent's order of proof deprived the Board of the opportunity to pursue additional Section 8(a)(1) allegations is a red herring.

Evidence of Abare's supervisory status is clearly relevant, Respondent specifically asserted an affirmative defense as to status as an "employee under the Act" and did not waive its ability to pursue such evidence. Regardless, Counsel for the General Counsel will not suffer any prejudice in its introduction in this proceeding. Accordingly, the ALJ should allow Respondent to introduce evidence of Abare's supervisory status when trial resumes.

II. EVIDENCE OF ABARE'S SUPERVISORY STATUS IS HIGHLY RELEVANT

A. Abare's Supervisory Status Is Relevant To The Question Of Respondent's Liability On The Section 8(a)(3) Allegations.

Evidence that Abare is a statutory supervisor is plainly relevant to the Board's Section 8(a)(3) allegations. The Board alleges in its Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing ("Complaint") that on or about March 29, 2014, Abare engaged in "concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection by posting comments on his Facebook page regarding employees' terms and conditions of employment and the results of the representation election." *See* Complaint ¶ XIV(a). It further alleges that Respondent later demoted Abare "because [he] engaged in the conduct described above in paragraph XIV(a)" and because "[Abare] formed, joined and assisted the Union." *Id.* ¶¶ XIV(c)-(d). The Board contends that Respondent's demotion of Abare violated Sections 8(a)(1) and 8(a)(3) of the Act. *Id.* ¶ XX.

It is well established that the protections of Section 7 of the Act apply only to an "employee" as the term is defined in Section 2(3) of the Act. "Supervisors," however, are specifically excluded from the definition of "employee" in Section 2(3). Thus, a statutory supervisor cannot engage in protected concerted activity, and an employer does not violate

Section 8(a)(3) of the Act by demoting or discharging a supervisor for supporting a union. *See* 29 U.S.C. §§ 152(3), (11); *Parker-Robb Chevrolet, Inc.*, 262 NLRB 402, 404 (1982) ("The discharge of supervisors as a result of their participation in union or concerted activity -- either by themselves or when allied with rank-and-file employees -- is *not* unlawful for the simple reason that employees, but not supervisors, have rights protected by the Act."); *2927 Eighth Avenue Food Corp.*, 1999 NLRB LEXIS 453 (June 25, 1999) (finding that termination of supervisory employee did not violate the Act "even if motivated by" union activities); *see also Miller Electric Company*, 301 NLRB 294 (1991); *Jack Welsh Company, Inc.*, 284 NRLB 378 (1987); *Long Beach Youth Home*, 230 NLRB 648 (1977).

The relevance of Abare's supervisory status therefore is clear. If Abare was not an "employee" under the Act at the time of his demotion, the Board cannot prevail on its claim that Respondent violated Section 8(a)(3) of the Act by demoting him. Respondent should be permitted to pursue this line of evidence, as it would establish a complete defense to the Board's Section 8(a)(3) allegation if successful.

B. Abare's Supervisory Status Is Relevant To Whether The Union Ever Enjoyed Majority Support.

Evidence that Abare is a statutory supervisor also bears directly on whether Counsel for the General Counsel can establish that the Union ever achieved a card majority. Proof of majority support is a prerequisite to the Board's request for a *Gissel* bargaining order in this case. When evaluating a claim of majority support, the Board has a longstanding policy of refusing to consider union authorization cards solicited by supervisors. *See, e.g., Reeves Bros.*, 277 NLRB 1568, 1568 n.1 (1986) (accepting cards of employees solicited by supervisors, or which were signed while supervisors were present, "at odds with the Board's longstanding policy of rejecting cards directly solicited by supervisors"); *Sarah Neuman Nursing Home*, 270 NLRB 663, 663 n.2

(1984) (noting "the Board has long refused to count cards directly solicited by supervisors"); *A.T.I. Warehouse, Inc.*, 169 NLRB 580, 580 (1968) ("It is well settled that cards obtained with the direct and open assistance of a supervisor are invalid" for purposes of determining union majority); *see also Heck's, Inc.*, 61 LRRM 1128 (1966) (neither cards signed by statutory supervisors nor those solicited by supervisors constitute valid designations of union as bargaining representative).

The Board most recently addressed this precedent in *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004). In *Harborside*, the Board held that "solicitations [of union authorization cards by supervisors] are inherently coercive absent mitigating circumstances." *Id.* at 906, 911 (emphasis added). The *Harborside* Board noted in this regard that "supervisory solicitation of an authorization card has an inherent tendency to interfere with the employee's freedom to choose to sign a card or not" because the employee "will reasonably be concerned that the 'right' response will be viewed with favor, and a 'wrong' response with disfavor." *Id.* at 911. As such, including cards solicited by supervisors in a tally of the union's support "can paint a false portrait of employee support during [the union's] election campaign." *Id.* at 912 (citation omitted). The Board has found supervisor coercion not only in cases of direct solicitation, but also in cases where "employees had reason to believe that whether they signed a card would become known" to a pro-union supervisor. *Madison Square Garden CT, LLC*, 350 NLRB 117, 122 (2005).

Given this precedent, evidence of Abare's supervisory status is a crucial part of Respondent's ongoing defense to the claim of majority support based on union authorization cards and whether a *Gissel* bargaining order may even be considered as a potential remedy in the case. During Counsel for the General Counsel's case-in-chief, Abare testified to having solicited "at least sixty cards." *See* Hearing Transcript, pg. 308. If Abare is deemed a statutory

supervisor, his solicitation of these cards would render them invalid under *Harborside* and undermine the Union's alleged card majority as a result. As such, it would be improper to preclude Respondent from introducing evidence of Abare's status on relevance grounds because this evidence directly affects whether the cards he solicited may be counted in determining majority support.

III. RESPONDENT HAS NOT "WAIVED" ANY OF ITS DEFENSES IN THIS PROCEEDING.

A. No Waiver Of Respondent's Defenses To The Section 8(a)(3) Allegations.

Contrary to Counsel for General Counsel's arguments, Respondent expressly preserved and has not "waived" its ability to challenge Abare's status as an "employee under the Act." Initially, Respondent notes that the Board has enumerated only certain matters as "affirmative defenses," including: Section 10(b) statute of limitations; charging party misconduct; deferral to grievance and arbitration procedures; re-litigation of issues; failure to provide notice under Section 8(g); and settlement bar, each of which must be affirmatively pled in order to be preserved. *See* NLRB Bench Book Sections 3-550 – 3-770. Notably, an employee's status as a statutory supervisor is not included among the enumerated affirmative defenses included in the Bench Book. The omission of this defense in the Bench Book suggests that an employee's status as a statutory supervisor is a not formal affirmative defense required to be preserved at the pleading stage.

In any event, Respondent plainly preserved such a defense in its Amended Answer. The Board adheres to a notice pleading standard. All that is required is a "clear concise description of the acts which are claimed to constitute unfair labor practices, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." *See* NLRB Rules and Regulations Section 102.15 (emphasis added). "The

General Counsel is not required to describe the evidence he will offer to prove the unfair labor practice." *Quanta*, 355 NLRB 1312, 1314 (2010); *see also Golden Stevedoring Co.*, 335 NLRB 410, 435 (2001) (under notice pleading standard, "the complaint need not contain a wealth of detail about the facts which the government intends to prove at trial"). As to the content required for an answer, the Board's rules state only that a respondent must "specifically admit, deny, or explain each of the facts alleged in the complaint" and provide further that any allegation in the complaint "not specifically denied or explained" shall be deemed to be admitted. *See* NLRB Rules & Regulations, Section 102.20.

Under applicable federal court precedent, the key in determining whether an affirmative defense is pled sufficiently is whether it "provide[s] fair notice of the issue involved." *Tyco Fire Products LP v. Victaulic Co.*, 777 F. Supp. 2d 893, 900 (E.D. Pa. 2011); *see also Falley v. Friends Univ.*, 787 F. Supp. 2d 1255, 1258 (D. Kan. 2011) ("...a responding party asserting affirmative defenses is required to do no more than 'affirmatively state' such affirmative defense.") Fair notice is provided "where the affirmative defense in question alerts the adversary to the existence of the issue for trial." *Id.* at 901. In *New Hampshire Insurance Company v. Marinemax of Ohio, Inc.*, 408 F. Supp. 2d 526, 530 (N.D. Ohio 2006), the court found that affirmative defenses generally stating that the plaintiff's claims were preempted, that the plaintiff waived certain coverage defenses, and that the complaint failed to state a claim upon which relief could be granted were all sufficiently pled. The court reasoned that the affirmative defenses put the Plaintiff on notice that preemption, waiver, and failure to state a claim were at issue in the case, which is all that the "fair notice" standard requires, and "defenses should not be stricken where the law or facts determining their application are unclear." *Id.* at 529-30; *see also Buttice v. G.D. Searle & Co.*, 938 F. Supp. 561, 565 (E.D. Mo. 1996) (affirmative defense stating that

"Plaintiff's claims are barred by the applicable statute of limitations" was sufficient to give plaintiff fair notice of the defense, even though it did not identify the specific statutes it relied upon); *Rozenblum v. Ocean Beach Properties*, 436 F. Supp. 2d 1351, 1356-57 (S.D. Fla. 2006) (Affirmative defense stating that employee was exempt under FLSA and stating as another affirmative defense that the employee's claims were barred by the "exemptions, exclusions, exceptions, and credits provided by FLSA" put plaintiff on notice of defendant's intention to raise sole-charge exception to FLSA's manager exemption); *Arbor Realty Sr., Inc. v. Keener*, 988 F. Supp. 2d 254, 259 (E.D.N.Y. 2013) (Defendant adequately raised doctrine of election of remedies in his amended answer where an affirmative defense stated that "[t]he Settlement Agreement constitutes the sole remedy available to plaintiff in this action."); *Daingerfield Island Protective Soc. v. Babbitt*, 40 F.3d 442, 444-45 (D.C. Cir. 1994) (Affirmative defense pled sufficiently even though the "boilerplate language does not cite the specific statute applicable here" given that affirmative defenses "need not be articulated with any rigorous degree of specificity").

Based on these pleading standards, Respondent has preserved its ability to challenge Abare's status as an "employee under the Act" as a defense in this case. The Amended Answer states as a First Defense that: "Novelis has not interfered with, restrained or coerced any employee in violation of the Act in the exercise of any rights he had under Section of the Act, [and] **the Company did not take any adverse action against <u>any employee under the Act</u>**." *See* Amended Answer, First Defense p. 8 (emphasis added). The bolded language was not included in Respondent's initial Answer, and was specifically added to the Amended Answer. This change should have alerted Counsel for General Counsel that Respondent added this language for some meaningful purpose. And the meaning should be plain even to the novice

Board practitioner. The assertion that Respondent took no action against any "employee under the Act" is an obvious reference to Section 2(3) of the Act which states:

> The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act [this subchapter] explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

29 U.S.C. §152(3) (emphasis added).

Significantly, the exclusion of supervisors from the definition of "employee" is contained in Section (2)(3) itself and not in Section 2(11), which merely defines the duties and responsibilities allowing a finding that an individual is a "supervisor." Thus, the relevant term of art for purposes of Section 8(a)(3) liability is "employee," and Respondent's amended First Defense represents a significant and not so subtle change from the original defense. Underscoring this point, none of the other exceptions to the definition of "employee" – agricultural laborer, domestic servant, individual employed by a parent or spouse, independent contractor, or individual employed by an employer subject to the Railway Labor Act – are remotely applicable in this case. *See* 29 U.S.C. §152(3). Thus, Respondent's assertion in the Amended Answer that it did not take adverse action against an "employee under the Act" in the context of this case can only be a reference to the supervisor exception contained in Section 2(3).

Further illuminating Respondent's intention to raise this defense is the fact that Respondent admitted to demoting Abare in its Amended Answer. *See* Amended Answer ¶ XIV(c). Thus, in the face of the Board's contention Respondent took unlawful adverse action

against a single Novelis employee, Respondent admitted it took the adverse action against Abare alleged in the Complaint, but then denied taking adverse action "against any employee under the Act." Who else could Respondent be referring to in its amended First Defense besides Abare?

If the First Defense in the Amended Answer were not enough, Respondent also stated as a Third Defense that "certain allegations, even if true, do not violate the Act." *Id.* at Third Defense p. 8. This defense plainly signals Respondent's intent to raise avoidance defenses separate from the *Wright Line* defense typically applicable on the merits to a Section 8(a)(3) allegation (which, incidentally, is Respondent's Fourth Defense). In addition, Respondent's Eighth Defense states: "even assuming that Mr. Abare engaged in legally cognizable concerted activity under the Act on March 29, 2014, which Novelis denies, such activity was not protected under the Act." *Id.* at Eighth Defense p. 9. This assertion further covers Respondent's supervisor challenge – if Abare is a statutory supervisor, his conduct cannot be deemed "protected under the Act."

Respondent's addition of the language in its First Defense, let alone the combination of the defenses discussed above, should have alerted Counsel for the General Counsel that Respondent planned on challenging Abare's employee status under the Act. Moreover, Respondent produced a variety of documents in response to Counsel for the General Counsel's subpoena *duces tecum* addressing the duties and responsibilities of crew leaders as well as Abare's specific duties, accomplishments and certifications. These documents included crew leader training materials, crew leader expectations and responsibilities, leadership development programs for crew leaders and other materials. Respondent produced these materials long ago and these documents in combination with Respondent's defenses and the questions asked of Abare himself on cross-examination should have left no doubt about Respondent's intention to

pursue this defense.[1] By any applicable measure, Respondent has preserved its ability to raise Abare's supervisory status as a defense to the Board's Section 8(a)(3) allegations.

B. No Effect On Respondent's Ability To Challenge The Union's Majority Status.

Although Respondent's Amended Answer should be sufficient to dispose of this issue, Respondent also has the right to develop evidence of Abare's supervisory status as part of its continued attack on the Union's claim of majority support. From the outset of the trial – indeed, during its cross-examination of Counsel for the General Counsel's very first witnesses – Respondent has been developing evidence that the Union did not achieve a legitimate card majority. During cross-examination of the Board's card solicitor witnesses, *see* Hearing Transcript, pgs. 222-237; 534-563; 800-802; 811-824; 845-855; 863-867; 877-883; 1225-1241; 1251-1254; 1282-1324, as well as direct and cross examination of many card signers, *see* Hearing Transcript, pgs. 658-660; 690; 782-783; 861-862; 1683-1685; 1742-1745; 1802-1806, Respondent elicited a substantial amount of evidence about the time, place, manner and individuals involved in the solicitation of union cards. Abare himself testified to having solicited and witnessed dozens of cards. *See* Hearing Transcript, pgs. 534-563. Respondent cross-examined him on the circumstances of those solicitations. None of this was objected to by Counsel for the General Counsel on the grounds Respondent did not preserve its right to challenge Union majority in its Amended Answer.

One of Respondent's purposes in developing this evidence has been to build context around Abare's solicitations to the extent it may be a necessary part of the *Harborside* analysis. No one can plausibly contend Respondent was required to announce these specific intentions

[1] A cursory review of the cross examination of Mr. Abare shows that Respondent asked Mr. Abare numerous questions about his crew leader duties and responsibilities, with no objections, based on relevance or alleged waiver of any defenses. *See* Hearing Transcript pgs. 498-512.

before eliciting the evidence. That Respondent's litigation strategy on this particular point was not obvious to counsel for General Counsel until recently does not mean it has "waived" its challenge to the Union's majority status. And, Counsel for the General Counsel's failure to recognize the scope of Respondent's majority challenge until now is not justification for its objection to Respondent's continued development of that defense.

Moreover, Respondent's attack on the Union's majority status is not a "defense" to any unfair labor practice at all, such that it must be included in a responsive pleading. Proving that the Union never achieved majority support will not absolve Respondent of liability for any of the unfair labor practices alleged in the Complaint. To the contrary, that proof serves only to curtail the remedies available to the Board as a result of those unfair labor practices. As such, evidence of Abare's supervisory status as it pertains to the Union's majority showing is not a "defense" that Respondent was capable of "waiving" to begin with. In this regard, the Board has held that an employer's challenge to the validity of union authorization cards was timely raised during cross-examination of a card solicitor or by calling the card signers during its case in chief. *See Montgomery Ward & Co., Inc.*, 253 NLRB 196, 196 (such challenges are "timely raised by, *inter alia*, cross-examination of the authenticating witness or the production of the card signer's direct testimony").[2] As detailed above, Respondent has consistently taken those very actions throughout the trial.

Further, Respondent did adequately signal its intention to challenge the Union's card majority in its Amended Answer. Respondent's Amended Answer states as part of its Ninth Defense that the bargaining order relief sought by the Board is inappropriate, in part, because it

[2] Moreover, Respondent is aware of no case in which the Board treated an employer's challenge to a union claim of majority status as "waived" because the employer failed to specifically raise that challenge in a responsive pleading.

is "inconsistent with the Section 7 rights of employees to not join unions" and because "the General Counsel cannot carry its burden in demonstrating that the Union ever had majority support." *See* Amended Answer at Ninth Defense p. 9. Counsel for the General Counsel has not claimed at any point during trial that this defense did not adequately preserve Respondent's other evidence relating to the validity of the union cards offered into evidence to date. It would be highly illogical and patently unfair to conclude at this point, in the middle of its defense case, that Respondent is now precluded from continuing to develop evidence rebutting the Union's claim of majority support.

C. Respondent Can Cure Any Deficiency By Amending Its Answer.

Even if the ALJ accepts Counsel for the General Counsel's meritless assertion that Respondent failed to preserve a challenge to Abare's employee status (for either purpose) in its pleadings, Respondent can easily cure such a defect by submitting a Second Amended Answer. The Board's Rules & Regulations permit a respondent to amend its answer with leave of the ALJ at any time after the hearing opens "upon such terms and within such periods as may be fixed by the administrative law judge." *See* NLRB Rules & Regulations Section 102.23; *see also* Fed.R.Civ.P. 15(b)(1) (admonishing federal courts to "freely permit" amendments made during trial when doing so "will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits").[3] The Board has acknowledged a respondent's right to amend an answer during the hearing to assert a statutory supervisor defense to Section 8(a)(3) allegations. *See, e.g, Operating Engineers Local Union No. 3*, 324 NLRB 1183, 1186-87 (1997) (allowing employer to amend answer at hearing to include statutory supervisor challenge to Section 8(a)(3) allegations even though defense was

[3] As discussed in detail below, presentation of the evidence at issue works no prejudice whatsoever against the General Counsel.

not raised before the hearing or in employer's position statements). Thus, allowing Respondent to submit a Second Amended Answer will cure any alleged technical pleading deficiency if one is found to exist in Respondent's Amended Answer.

D. The Stipulated Election Agreement Is Irrelevant.

Counsel for the General Counsel and Charging Party also suggested Respondent cannot challenge Abare's supervisory status because it stipulated in the underlying representation proceeding to the inclusion of crew leaders in the voting group. This contention has no merit. For one thing, the Board has rejected it in previous cases. *See, e.g., Insular Chemical Corp.*, 128 NLRB 93 (1960) (rejecting General Counsel's contention that participation of certain employees in card solicitations did not invalidate the cards, even if the employees were found to be supervisors, because they had voted in the election without challenge). In addition, the Board has long held generally that "a preelection agreement wherein, as here, an employer stipulates that certain individuals are not supervisors within the meaning of the Act does not estop the employer from subsequently contesting their status because unit inclusion of individuals who are shown to be statutory supervisors would without question contravene the Act." *The Oakland Press Co.*, 266 NLRB 107, 108 (1983) (citing *Esten Dyeing & Finishing Co., Inc.*, 219 NLRB 286 (1975) and *Fisher-New Center Co.*, 184 NLRB 809 (1970)); *see also Gordonsville Industries, Inc.*, 252 NLRB 563, 596 (1980) (union's agreement not to contest Board's challenge of ballots of employees whose names did not appear on voter list has no effect on question in ULP case as to their alleged supervisory status). In fact, the Board has ruled that findings regarding an employee's supervisory status made in a representation proceeding do not finally and conclusively resolve the issue for purposes of a subsequent unfair labor practice proceeding. *See, e.g.,*; *Leonard Niederriter Company, Inc.*, 130 NLRB 113, 115 n. 2 (1961)(finding in representation case that card signer was not a supervisor did not resolve question of his status in

later unfair labor practice proceeding where individual was alleged to have been demoted and then fired after employer learned of his union activities). Accordingly, the inclusion of crew leaders in the stipulated election agreement has no preclusive effect on Respondent's ability to present evidence of Abare's supervisory status in this proceeding.

IV. COUNSEL FOR THE GENERAL COUNSEL'S CLAIMS OF "PREJUDICE" ARE GROUNDLESS

Allowing evidence of Abare's supervisory status will work no prejudice whatsoever and Counsel for the General Counsel's claims to the contrary are baseless. First, they claim that because they did not anticipate and comprehend that one of Respondent's litigation strategies was to attack Abare's supervisory status, they were denied an opportunity to examine Respondent's crew leaders on the issue of their duties and responsibilities and whether they (or Abare) function as statutory supervisors. This argument is disingenuous for several reasons. First, as stated at the outset, Respondent has no intention of proving that all crew leaders are supervisors. Second, Respondent did not address the issue of Abare's duties and responsibilities in the direct examination of any of its crew leader witnesses. Thus, questioning from Counsel for the General Counsel on this issue would have been well beyond the scope of Respondent's direct examinations. Time after time during the Board's case-in-chief, Counsel for the General Counsel objected to cross-examination questioning from Respondent's counsel on the grounds Respondent was straying beyond the scope of direct. And time after time, the ALJ sustained these objections. *See, e.g.*, Hearing Transcript, pgs. 185:14-22; 224:15-21; 867:23 – 868:11; 871:12-24; 954:13-24; 1215:4-9; 1240:24 - 1241:2; 1244:8-14; 1263:3-10; 1286:13-21; 1354:16 – 1355:3; 1371:24 – 1372:5; 1380:12-15; 1382:25 – 1383:4. So Counsel for the General Counsel knows full well that any attempts to examine Respondent's witnesses on statutory supervisor issues would almost certainly have been precluded as beyond the scope of the direct

examinations conducted of Respondent's crew leader witnesses. Regardless, Respondent's decision to limit the scope of its direct examinations of certain witnesses works no prejudice against the Board. Counsel for the General Counsel can simply recall those witnesses its rebuttal case just as Respondent was directed to do when it sought to ask questions beyond the scope of direct.[4]

Counsel for the General Counsel also expressed dismay at the fact that the "late" revelation regarding Respondent's defense strategy has hampered the Board's ability to consider whether a statutory supervisor argument regarding Abare opens the door on other fronts – for instance, that all crew leaders might be supervisors and therefore that Respondent may have committed additional violations of Section 8(a)(1) by the actions of its anti-union supervisors. They complained that the Board may have tried an entirely different case "had it known" Respondent was planning on raising a statutory supervisor claim as part of its defense case. Counsel for the General Counsel insinuated that allowing Respondent to go forward with this line of evidence would frustrate the integrity of the proceedings to date.

These assertions are laughably misleading. Counsel for the General Counsel has no intention of pursuing Section 8(a)(1) allegations against Respondent's anti-union crew leaders. Doing so would destroy the Union's card majority under *Harborside*, since crew leaders either solicited or signed the majority of the cards in evidence. Assuming Counsel for the General Counsel is aware of this precedent, it is safe to assume it would never seriously consider

[4] In a similar vein, Counsel for the General Counsel's complaints about the impact of Respondent's evidentiary proffers for those witnesses provide no basis for excluding evidence of Abare's supervisory status. It goes without saying the Board has no right to cross-examine a witness based on excluded evidence – obviously, that evidence is not within the scope of the direct examination of that witness. Unless Counsel for the General Counsel withdraws its objections to Respondent's evidentiary proffers, its claim that Respondent's proffers have prejudiced the Board's position on this or any other issue in the case is meritless.

pursuing Section 8(a)(1) allegations against Respondent on the basis of crew leader action. Thus, its claim that it may have been denied this opportunity borders on frivolous.

Even if Counsel for the General Counsel was inclined to shift gears at this stage of the proceeding, sacrifice its bargaining order request, and attempt to assert Section 8(a)(1) charges based on the actions of crew leaders, it would not be doing so based on a late-breaking revelation that crew leaders might be statutory supervisors. The Board investigated this case extensively before electing to proceed and to request a bargaining order. It interviewed dozens of Novelis employees including many crew leaders and collected a voluminous amount of background information, as evidenced by the number of witnesses Counsel for the General Counsel called in its case and the volume of Jenks statements collected from those witnesses prior to their appearances at trial. The Board determined the appropriate scope of the allegations in the case. It could easily have elected to proceed on a theory that some (or all) crew leaders are statutory supervisors and therefore that the actions of some or all of those individuals during the campaign violated Section 8(a)(1). As noted above, the Board was not bound by the election stipulation regarding the voting status of crew leads. Moreover, as stated above, Respondent produced a variety of documents to the Board in response to a subpoena request, and many of those documents should have signaled to Counsel for the General Counsel that Respondent was planning on pursuing a statutory supervisor theory. The Board could have amended its complaint based on Respondent's document production and used Respondent's own documents against it on the issue of crew leader supervisory status.

But the Board chose not to go down that path and it cannot now claim prejudice or seek to reverse course based on Respondent's assertion of a defense. Both sides make strategic decisions during the course of litigation. Respondent's election of a defense strategy that, in

Counsel for the General Counsel's view, implicates additional violations of the Act but that the Board chose not to pursue, simply does not result in prejudice to the Board. The ALJ should not equate Counsel for the General Counsel's surprise at Respondent's order of proof with prejudice to Counsel for the General Counsel's case. They are not the same thing.

V. THE MOST EQUITABLE SOLUTION IS TO PERMIT RESPONDENT TO COMPLETE ITS DEFENSE AND TO ALLOW THE BOARD TO RESPOND AS IT SEES FIT

Regardless of how the ALJ resolves any of the issues discussed above, Respondent respectfully submits that the most practical manner in which to resolve the issue of Abare's supervisory status is to permit Respondent to introduce the evidence it intended to elicit at trial on October 3rd, complete the record on that point, and allow Counsel for the General Counsel to respond in its rebuttal case. The Board's full panoply of options remain available to it at this point. It can use its rebuttal case to focus on Respondent's assertion that Abare is a statutory supervisor and elicit relevant evidence to rebut that assertion. In the process, Counsel for the General Counsel can call back the crew leader witnesses who testified and examine them on the scope of Abare's duties. Alternatively, if Counsel for the General Counsel believes that Respondent's litigation strategy exposes it to additional Section 8(a)(1) liability, it can seek permission to amend the Complaint and pursue those allegations.[5] In short, there is no reason to violate Respondent's due process right to continue its development and pursuit of this defense given that Respondent's case is still open and Counsel for General Counsel still has the opportunity to fully address any claimed issues as part of its rebuttal case. For the reasons stated above, Counsel for General Counsel's attempt to preclude evidence of Abare's supervisory status must be rejected.

[5] Of course, Respondent would oppose such an amendment after closure of Counsel for General Counsel's case given that it had ample opportunity to develop and present that theory and evidence in its case-in-chief but elected not to do so.

Respectfully submitted this 10th day of October, 2014.

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CERTIFICATE OF SERVICE

I certify that on this 10th day of October, 2014, I caused the foregoing to be electronically filed with the National Labor Relations Board at http://nlrb.gov and a copy of same to be served by e-mail on the following parties of record:

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION,	)		
	)		
AND	)	**CASES:**	**03-CA-121293**
	)		**03-CA-121579**
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO.	)		**03-CA-122766**
	)		**03-CA-123346**
	)		**03-CA-123526**
	)		**03-CA-127024**
	)		**03-CA-126738**

NOVELIS CORPORATION,	)		
	)		
AND	)	**CASE:**	**03-RC-120447**
	)		
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO.	)		

RESPONDENT NOVELIS CORPORATION'S MOTION TO RECONSIDER

Respondent Novelis Corp. ("Novelis" or "Respondent") respectfully moves the ALJ to reconsider his October 16, 2014 ruling granting the Motion by General Counsel and Charging Party to Preclude Evidence Regarding Supervisory Status of Everett Abare. In support, Novelis states as follows:

The ALJ's conclusion that "[s]upervisory status, if asserted as a defense, falls within the ambit of notice requirements in pleadings and must be affirmatively pled" is inaccurate and based on an erroneous interpretation of applicable legal precedent. The ALJ's conclusion that

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supervisory status is waived if not affirmatively pled fails to conform with the requirements of due process, particularly with respect to Respondent's challenge to the validity of the authorization cards solicited by Everett Abare, and fails to consider substantial record evidence demonstrating that Abare's supervisory status has been placed squarely at issue in this case since the onset of General Counsel's case in chief. For these reasons, the ALJ's finding that Respondent waived both its opportunity to challenge the validity of the authorization cards executed and solicited by Everett Abare (or any other supervisor for that matter), and its avoidance defense to the alleged violation of Section 8(a)(3) involving its demotion of Abare, is clear error.

I. Respondent Did Not "Waive" Its Right to Introduce Evidence Of Abare's Supervisory Status Under Either Theory Addressed in the ALJ's Ruling

A. Respondent Cannot Have "Waived" A Defense To The Union's Claim of Majority Before Evidence of the Identity of Card Solicitors Was Introduced at Trial

The ALJ's conclusion Respondent "waived" the ability to introduce evidence of Abare's supervisory status as a defense to the Union's claim of a card majority is incorrect both as a matter of law and a matter of practical reality. The cases cited by the ALJ in support of this premise dealt with the issue of supervisory status as a defense to unfair labor practice allegations. None involved an employer's contention of supervisory status as a challenge to the validity of authorization cards. Respondent is aware of no case in which the Board treated an employer's challenge to a union claim of majority status on the basis of supervisory participation as "waived" because the employer failed to specifically raise that challenge in a position statement or responsive pleading. And for good reason: such treatment would directly contravene existing Board precedent and common sense.

As noted in Respondent's brief, the Board has recognized that authorization card challenges are "timely raised by, *inter alia*, cross-examination of the authenticating witness or the production of the card signer's direct testimony" *See Montgomery Ward & Co., Inc.*, 253 NLRB 196, 197 (1980). The reason for this approach is practical: the Board recognizes that General Counsel bears the burden of demonstrating the authenticity of authorization cards, and an employer cannot reasonably be expected to anticipate the full scope of the potential challenges to the authenticity or validity of those cards until General Counsel has satisfied that burden.

Here, neither Abare, nor any other individual, was identified in the underlying charges or operative pleadings as a card solicitor. Respondent was afforded no opportunity for discovery in advance of the hearing for the purpose of ascertaining the identity of the card solicitors. Respondent did not receive copies of the authorization cards identifying the card solicitors until the days prior to the hearing, and the cards themselves do not conclusively establish who was involved in the solicitation process. The card solicitors presented at hearing consistently testified that the solicitations were performed outside of the presence of management. Simply put, Respondent was never informed that Abare – or any other crew leader – was a card solicitor until the Board introduced that evidence at trial. In fact, Respondent was not formally made aware of the extent of Abare's participation in the card solicitation process until General Counsel's direct examination of Abare himself. Abare testified that he initiated contact with the Union for the purpose of organizing the workplace. *See* Hearing Transcript, pg. 294. He testified that he received authorization cards from the Union and distributed them to employees. *See* Hearing Transcript, pgs. 306-308. Abare solicited "at least sixty cards" s*ee* Hearing Transcript, pg. 308.

None of this information was contained in unfair labor practice charges or in the Board's pleadings.

Nor, for that matter, was evidence of the identify of any of the other card solicitors. In this regard, the fact that the Union's most proliferous solicitor happened to be Abare – the lone Section 8(a)(3) discriminatee in the case – actually muddies the waters on this point. For example, Melanie Burton is also a crew leader in the Cold Mill's Annealing Metal Movement department. She testified to having solicited fourteen cards besides her own. *See* Hearing Transcript, pg. 712. She was not identified in any charge or Board pleading, is not a Section 8(a)(3) alleged discriminatee, and the extent of her participation in card solicitations did not become apparent until she took the stand. As such, it would be preposterous to hold that Respondent forfeited the right to litigate Burton's status because it did not raise such an argument in its position statement, its responsive pleadings and its opening statement.

Respondent cannot be deemed to have "waived" a fact – supervisory participation in card signings – it did not know about before the commencement of trial. The ALJ's conclusion Respondent did is akin to a finding Respondent forfeited, by not asserting in its position statement and responsive pleadings, a defense it did not know it had until commencement of the Board's case-in-chief. This is plainly wrong.

Thus, the considerable emphasis the ALJ placed upon Respondent's perceived failure to preserve the issue of supervisory status in the various stages of litigation that occurred prior to the presentation of evidence is gravely in error. Respondent cannot be expected to preserve supervisory status in the context of card validity during the "procedural history and events at the critical junctures of this litigation" detailed by the ALJ, since each occurred prior to the presentation of the evidence which serves as Respondent's first opportunity for notice. This is

the ***very*** harm the Board seeks to avoid in the standards set forth in *Montgomery Ward.* By permitting a respondent to timely raise its challenges to card validity at cross-examination of the card solicitor or signer, the Board ensures the respondent the opportunity for full and fair notice of the nature and scope of the challenges available to it. The ALJ's ruling is at odds with *Montgomery Ward* and Respondent's entitlement to due process.

B. The ALJ's Finding that Supervisory Status Must Be Affirmatively Pled As a Defense to Section 8(a)(3) Charges is not Supported by the Legal Precedent Cited in the Order.

The ALJ's finding Respondent waived its right to challenge Abare's employee status as a defense to the Section 8(a)(3) allegations in the case is also in error.[1] The ALJ cited *The George Washington University,* 346 NLRB 155, 155 n.2 (2005), and *Circus Circus Hotel*, 316 NLRB 1235, 1235 n.1 (1995), as support that "affirmative defenses based on bare assertions are insufficient" and "insufficient affirmative defenses will not be addressed," respectively. However, a plain reading of both cases demonstrates that neither addressed the sufficiency of affirmative defenses in the context of the notice pleading requirements applicable to both federal court and Board proceedings. Instead, both dealt with whether a litigant that raises of various affirmative defenses in a responsive pleading but fails subsequently to provide any evidence or testimony in support raises any genuine issues of material fact for the purpose of precluding summary judgment in favor of the complaining party. Thus, these cases bear no relevance to the issue of "waiver" at hand, and lend no support for the legal conclusion reached by the ALJ.

[1] In the Order, the ALJ misstates Respondent's affirmative defense as stating "it 'has not interfered with, restrained or coerced any employee.'" *See* Order pg. 3. and does not address the fact that Respondent amended the defense in its Amended Answer to affirmatively state that "the Company did not take adverse action against any employee under the Act." This affirmative defense could only relate to Abare as the only Section 8(a)(3) discriminatee in the case and directly put his status as an "employee under the Act" at issue. Thus the issue of waiver should not even be a question.

Further, the ALJ cited *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 350 (1971), for the premise that "[t]he purpose of an affirmative defense is to give the opposing party notice and a chance to argue in response." While Respondent does not deny that this is an accurate statement addressing the notice pleading standard applicable to affirmative defenses, further examination of the case reveals that the court permitted the defendant to amend its answer ***after trial*** to include an affirmative defense of estoppel, even though estoppel is expressly delineated as a waivable affirmative defense in Rule 8(c) of the Federal Rules of Civil Procedure. Thus, *Blonder-Tongue Labs* actually supports a result contrary to that reached by the ALJ.

The ALJ also cited *Saks v. Franklin Covey Co.*, 316 F.3d 337, 350 (2nd Cir. 2003) for the premise that "[o]ne of the core purposes of FRCP Rule 8(c) is to place opposing party notice and a chance to argue in response." Again, while this may be an accurate statement concerning the applicable notice pleading requirements, further review of the case reveals the Second Circuit recognized that "a district court may still entertain [untimely pled] affirmative defenses in the absence of undue prejudice to the plaintiff, bad faith or dilatory motive on the part of the defendant, futility, or undue delay of the proceedings" and remanded the case for a determination as to the appropriateness of amendment.

Finally, the ALJ cites *Harris v. Sec'y, U.S. Dep't of Veterans Affairs*, 126 F.3d 339, 343 (D.C. Cir. 1997), for the position that "[f]ailure to raise an affirmative defense in pleadings deprives the opposing party of precisely the notice that would enable it to dispute the crucial issues of the case on equal terms." Again, however, a plain reading of that case demonstrates that is inapposite to the issue of waiver. Rather, the case addressed the question whether a court may consider an affirmative defense raised by a litigant for the first time on summary judgment,

or whether it must first require the litigant to seek formal amendment to the operative pleading in accordance with Rule 15(a) of the Federal Rules of Civil Procedure. The court did not deem the defendant's statute of limitations defense waived. Rather, it remanded the case to the district court to consider, in its discretion, whether amendment of the pleadings was appropriate.

The case is instructive, though not for the reasons cited by the ALJ. The court recognized, consistent with Rule 15(b) of the Federal Rules of Civil Procedure that "[w]here a matter has gone to trial and parties have litigated the unpled issues by express or implied consent," the need to amend may be "irrelevant." *Id.*, at 344. To this end, Rule 15(b) provides: "[w]hen an issue not raised by the pleadings is tried by the parties' express or implied consent, ***it must be treated in all respects as if raised in the pleadings***."(emphasis added).[2] Thus, *Harris*, in accordance with Rule 15(b), evinces that the issue of whether a defense can be litigated is not a matter of mechanical examination of the pleadings. It must be considered in light of relevant practical factors, including whether the issue was, in fact, made part of the presentation of evidence at trial.

The ALJ's analysis and interpretation of the Board cases cited in support of his conclusion that supervisory status must be affirmatively pled to avoid waiver is likewise flawed. The ALJ cites *Dole Fresh Vegetables*, 339 N.L.R.B. 785, 792 (N.L.R.B. 2003) and *St. Barnabas Hosp.*, 334 N.L.R.B. 1000, 1002 (N.L.R.B. 2001) for the premise that "party pleading supervisory status as an affirmative defense to an 8(a)(3) violation bears the burden of establishing that defense." Yet, in each of these cases, supervisory status was affirmatively pled.

[2] In Respondent's cross-examination of Abare, he was asked numerous questions about the nature of his crew leader duties and responsibilities with only one relevance objection from Counsel from the General Counsel. That objection was overruled prior to Respondent's counsel having the opportunity to explain the relevance of its line of questioning. *See* Hearing Transcript pg. 504.

Dole Fresh Vegetables, 339 N.L.R.B. at 792 ("The Respondent in addition to its general denials in its answer to the above complaint allegations has asserted affirmative defenses contending that employees . . . were supervisors . . . within the meaning of Section 2(11) of the Act."); *St. Barnabas Hosp.*, 334 N.L.R.B. at 1002 ("In its answer, Respondent alleges as affirmative defenses that the discriminatees were supervisory and or managerial employees and thus not employees within the meaning of the National Labor Relations Act."). As such, neither of these cases address whether supervisory status is subject to waiver, nor can they. Indeed, a factual observation that a party has pled supervisory status as a defense in its responsive pleading is far removed from a legal conclusion that supervisory status ***must*** be affirmatively pled in order to avoid waiver.

Moreover, while the ALJ cites *Springfield Manor*, 295 N.L.R.B. 17 (N.L.R.B. 1989) for the proposition that "supervisory status is waivable affirmative defense," further analysis of that case demonstrates that it involved an attempt by the respondent to amend its pleadings to include supervisory status ***after the hearing*** to conform to the evidence presented. The Board refused to grant respondent's request only upon a finding that the respondent "failed to raise the issue of . . . supervisory status in its answer to the complaint ***or at the hearing***," and further noted that "even if we were to grant the Respondent's motion, the Respondent has not met its burden of establishing [ ] supervisory status." Thus, the Board's ruling was not made upon a finding of waiver. Rather, it was a result of its analysis of the merits of the respondent's presented evidence. To this point, the ALJ noted:

> There did not seem to be an issue about the fact that Willhite was a supervisor at Dirksen House and was not a supervisor at Springfield Manor. In this case, however, Respondent ***has raised the issue for the first time in its brief***, alleging that Willhite was in fact a supervisor at Springfield Manor. This matter was neither raised as an issue in Respondent's Answer, ***nor in the course of six days of hearing in the case***. The question of Willhite's alleged supervisory status ***was***

> ***not litigated at the hearing. She was asked no questions, nor was there any testimony or documentary evidence from other witnesses on the subject.***

Id., at 20. (emphasis added). Thus, *Springfield Manor* belies the mechanical approach prescribed by the ALJ, and dictates that proper analysis of the issue of supervisory status requires consideration beyond mere investigation of pleadings.

C. The Record Evidence Demonstrates that Abare's Supervisory Status Has Been Litigated Since the Onset of the Hearing

Even a cursory examination of the record demonstrates that the parties have litigated the issue of Abare's supervisory capacity ***from the onset of General Counsel's case in chief.*** Indeed, Abare's supervisory responsibilities were placed squarely at issue ***by General Counsel*** at the onset of the hearing when it elicited significant testimony ***during its direct examination of Abare*** concerning the duties and responsibilities for which he was responsible. *See* Hearing Transcript, pgs. 246-256. Much of Abare's testimony on direct revealed various indicia of supervisory status, including the significant training provided to him and paid for by Respondent relating to his leadership responsibilities as an EMT, *see* Hearing Transcript, pgs. 246-247, his service as a shift Captain for Respondent's EMS squad, *see* Hearing Transcript, pg. 248, his assignment as Respondent's Fire Captain, which Abare characterized as "the heart and soul of the fire department . . . the commander of the fire department," *see* Hearing Transcript, pg. 248, the compensation and other "perks" he receives as a result of these assignments, *see* Hearing Transcript, pgs. 248-253, his role as a Crane Trainer, *see* Hearing Transcript, pgs. 253-254, and the specific duties required of his job as a Crew Leader, *see* Hearing Transcript, pgs. 255-256.

Respondent elicited further testimony from Abare on cross concerning his authority to train and direct the work of others and to perform certain staffing functions. *See* Hearing Transcript, pgs. 498-499, 507. Respondent elicited testimony from Abare on cross relating to his

attendance at management meetings and his authority to evaluate the technical skills of operators assigned to his crew. *See* Hearing Transcript, pgs. 504-506. Respondent elicited testimony from Abare on cross relating to his exercise of independent judgment in matters concerning the safety of his crew and the operation and maintenance of the equipment used by his crew in the performance of their job functions. *See* Hearing Transcript, pgs. 505-506.[3]

Each of the functions detailed above represent indicia of Abare's supervisory authority pursuant to Section 2(11) of the Act. *See* NLRB Hearing Officer's Guide, pgs. 99-108. Such authority is clearly relevant to the validity of the cards solicited by Abare. *See Harborside Healthcare, Inc.*, 343 NLRB 906 (2004)("[S]olicitations [of union authorization cards by supervisors] are inherently coercive absent mitigating circumstances."); *Reeves Bros.*, 277 NLRB 1568, 1568 n.1 (1986) (accepting cards of employees solicited by supervisors, or which were signed while supervisors were present, "at odds with the Board's longstanding policy of rejecting cards directly solicited by supervisors"); *Sarah Neuman Nursing Home*, 270 NLRB 663, 663 n.2 (1984) (noting "the Board has long refused to count cards directly solicited by supervisors"); *A.T.I. Warehouse, Inc.*, 169 NLRB 580, 580 (1968) ("It is well settled that cards obtained with the direct and open assistance of a supervisor are invalid" for purposes of determining union majority); *Heck's, Inc.*, 61 LRRM 1128 (1966) (neither cards signed by statutory supervisors nor those solicited by supervisors constitute valid designations of union as bargaining representative).

Moreover, Abare's authority is plainly relevant to the Board's Section 8(a)(3) allegations. *Parker-Robb Chevrolet, Inc.*, 262 NLRB 402, 404 (1982) ("The discharge of supervisors as a

[3] Throughout his cross-examination, there was only one objection to one uestion on relevance grounds. *See* Hearing Transcript pgs. 498-507. Thus, General Counsel and Charging Party, and not Respondent, waived any right to object to further development of such evidence.

result of their participation in union or concerted activity – either by themselves or when allied with rank-and-file employees -- is *not* unlawful for the simple reason that employees, but not supervisors, have rights protected by the Act."); *2927 Eighth Avenue Food Corp.*, 1999 NLRB LEXIS 453 (June 25, 1999) (finding that termination of supervisory employee did not violate the Act "even if motivated by" union activities); *see also Miller Electric Company*, 301 NLRB 294 (1991); *Jack Welsh Company, Inc.*, 284 NRLB 378 (1987); *Long Beach Youth Home*, 230 NLRB 648 (1977).

Most importantly, however, the evidence elicited by Counsel for the General Counsel itself on direct, and by Respondent on cross, demonstrates that the issue of Abare's supervisory status has been developed from the outset of trial.

III. The ALJ's Erroneous Ruling That Novelis Cannot Prove Mr. Abare's Supervisory Status Due To Its Pre-Election Stipulation Is Based Upon Inapplicable Caselaw

The ALJ justifies his ruling that Respondent cannot prove Abare's supervisory status by finding that because Novelis took the position that Abare was an eligible voter in the February 2014 election, it is "bound" by Abare's participation in the election. In support of this ruling, the ALJ cites to three inapplicable cases: *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921 (1997), *Premier Living Center*, 331 NLRB 123 (2000), *Dean & Deluca New York, Inc.*, 338 NLRB 1046 (2003). All of these cases, however, address voter eligibility issues within the context of a representation case proceeding. Here, as explained during the hearing, Respondent is not seeking to challenge the election results but rather intends to bring forth evidence regarding

Abare's supervisory status in order to defend itself in a subsequent unfair labor practice proceeding.[4]

In *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921 (1997), the union filed a representation petition for licensed practical nurses. The employer demanded a hearing to demonstrate that the nurses were supervisors, withdrew its request, and consented to an election. *Id.* Following the election and the union's certification, the employer bargained for several sessions and then refused to bargain on the basis that the nurses were statutory supervisors. *Id.* The Board held that the employer was barred from challenging the validity of a union's certification based on its belief that the unit members are statutory supervisors because it failed to raise the issue during the representation proceeding. *Id.* at 922-23. This decision relates to an employer's challenge to the validity of a union's certification and is not applicable to Novelis' defense of unfair labor practice allegations.

Premier Living Center, 331 NLRB 123 (2000), also cited by the ALJ, cites the *I.O.O.F.* decision for the proposition that "in the absence of newly discovered and previously unavailable evidence or special circumstances an employer may not challenge the validity of a union's certification based on a belief that unit members are statutory supervisors if it failed to raise the issue during the representation proceeding," thus making clear that the reasoning of the *I.O.O.F.* decision should be limited to representation proceedings and subsequent certification issues. *Premier Living Center* is also inapplicable. In this decision, the Board refused to permit an employer to proceed with a unit clarification petition seeking to exclude licensed practical nurses where the employer stipulated to their inclusion in the unit. *Id.* at 123-24. Clearly, the *Premier*

[4] It cannot be seriously suggested that Respondent is bound by a pre-election settlement made three months prior to an adverse employment action that forms the basis of the General Counsel's 8(a)(3) allegation, yet this is the effect of the ALJ's ruling.

Living Center decision is limited to unit issues, and as noted, Novelis is not seeking a clarification or change to a unit.

Finally, the ALJ cited to *Dean & Deluca New York, Inc.*, 338 NLRB 1046 (2003). In *Dean & Deluca*, following the petition, the parties agreed to the inclusion of department employees in the voting unit. *Id.* at 1048-49. Following the vote, the union challenged the eligibility of certain departmental supervisors on the grounds that they were statutory supervisors. *Id.* On review, the Board affirmed the ALJ's decision that the stipulated election agreement dictated voters' eligibility. *Id.* at 1049. This decision is clearly distinguishable, as it again also relates to voter eligibility, which in no manner pertains to the purposes for which Mr. Abare's supervisory status will be offered.

The ALJ erred in relying upon these voter eligibility cases to preclude Respondent from putting on clearly relevant evidence in a proceeding – an unfair labor practice case – that is totally separate from the underlying representation proceeding in which the stipulation at issue was reached. Moreover, the ALJ did not address caselaw cited in Respondent's brief. *See Gordonsville Industries, Inc.*, 252 NLRB 563, 596 (1980) (union's agreement not to contest Board's challenge of ballots of employees whose names did not appear on voter list has no effect on question in ULP case as to their alleged supervisory status); *Leonard Niederriter Company, Inc.*, 130 NLRB 113, 115 n. 2 (1961) (finding in representation case that card signer was not a supervisor did not resolve question of his status in later unfair labor practice proceeding where individual was alleged to have been demoted and then fired after employer learned of his union activities); *Insular Chemical Corp.*, 128 NLRB 93 (1960) (rejecting General Counsel's contention that participation of certain employees in card solicitations did not invalidate the cards, even if the employees were found to be supervisors, because they had voted in the election

without challenge). Indeed, in *Dole Fresh Vegetables*, 339 NLRB 785 (2003), a decision cited by the ALJ, the Board affirmed its prior holdings that an employer is entitled to litigate supervisory status issues in a unfair labor practice proceeding despite the issue having been litigated in a representation proceeding. Here, the supervisory issue has never been litigated, which makes a finding Respondent is precluded from doing so now even more inappropriate.

IV. The ALJ's Finding That Allowing The Introduction of Supervisory Capacity Would Be Prejudicial Is Misguided

The ALJ's ruling that permitting the introduction of evidence of Abare's supervisory capacity would be prejudicial is troubling. Indeed, the ALJ's reasoning is actually backwards, as it would be highly prejudicial to Respondent to exclude such evidence. For the reasons stated in its brief and which were unaddressed by the ALJ's ruling, no prejudice will befall the General Counsel or Charging Party should Respondent be permitted to put on this highly relevant evidence. As to the prejudice to Novelis, as the ALJ is aware, the General Counsel is seeking the most drastic remedy under the law- a *Gissel* bargaining order- against Respondent (despite having been denied such relief by the federal court in the ancillary 10(j) action). The ALJ is obligated to ensure a full and complete evidentiary record. This is particularly true where the General Counsel seeks extraordinary relief. As the evidence of Abare's supervisory status is unquestionably relevant for two important purposes, a failure to permit such crucial evidence under the guise of prejudice to the party seeking an extreme remedy deprives Respondent of its due process rights.

The ALJ claims that "permitting the Respondent to litigate Abare's supervisory status would likely result in the General Counsel recalling many, if not most, of the witnesses who have already testified to contest [regarding union authorization card transactions]." As an initial matter, given that the issue is highly relevant, even if true, this is not a legitimate reason for

precluding Respondent's defense. Regardless, the ALJ is mistaken that allowing Respondent's evidence would require the General Counsel to call "many, if not most of the witnesses" who have testified, as the vast majority of the General Counsel's witnesses have not testified to any working interaction with Abare whatsoever. In fact, only seven of the Board's witnesses – Art Ball; Melanie Burton; Nathan Gingerich; Caleb Smith; Stephen Wheeler; Justin Waters and Amy Watts – work in the Annealing Metal Movement of the Cold Mill. These individuals are in the best position to rebut testimony that Abare functions as a supervisor. Thus, the Board hardly will have to recall "many, if not most" of its witnesses in rebuttal.

Further, for the ALJ to state that having the General Counsel call back witnesses is somehow prejudical ignores the course of these proceedings. Time after time during the Board's case-in-chief, Counsel for the General Counsel objected to cross-examination questioning from Respondent's counsel on the grounds Respondent was straying beyond the scope of direct. And time after time, the ALJ sustained these objections and encouraged counsel to call them in Respondent's case-in-chief. *See, e.g.*, Hearing Transcript, pgs. 185; 224; 867-68; 871; 954; 1215; 1240-41; 1244; 1263; 1286; 1354-55; 1371-72; 1380; 1382-83. Thus, if it was not prejudicial for the Respondent to have to recall witnesses in its case-in-chief, it cannot possibly be prejudicial for Counsel for the General Counsel to have to recall witnesses in its rebuttal case when Respondent had no opportunity to explore these issues on cross-examination.

The single case cited by the ALJ for support of his conclusion that allowing Respondent to put on a relevant defense would result in undue delay and unfairly prejudice the General Counsel and Charging Party, *Stroehmann Bros.*, 268 NLRB 1360, 1361 n. 10 (1984) is not a bargaining order decision and does not support the ALJ's conclusion in any respect. Rather, the decision merely provides in a footnote that where "proffered evidence could have some

relevance to the material issues, we note that the administrative law judges are authorized to exclude such evidence if its probative value is substantially outweighed by . . . considerations of undue delay, waste of time, or needless presentation of cumulative evidence" (internal quotations omitted) (emphasis added). *Id.* In *Stroehmann Bros.*, the Union asserted that the Company failed to bargain over a change to the Christmas bonus at a plant. *Id.* at 1300. The Board upheld the ALJ's exclusion of evidence of the Company's bargaining with other unions at other plants on the grounds that its relevance was substantially outweighed by the considerations noted above. *Id.* at 1301 n. 10.

Unlike *Stroehmann Bros.*, where the evidence clearly had limited probative value to the allegations, the evidence to be offered as to Abare's supervisory status is directly relevant to the allegations and remedy at issue and cannot in any respect be considered to be cumulative evidence. It is clear that the potential recalling of a some witnesses to attempt to rebut Abare's supervisory status cannot substantially outweigh the probative value of the highly relevant evidence of Abare's supervisory status. The ALJ will clearly abuse his discretion if he restricts Novelis' ability to defend itself against extreme allegations based upon a one-sided and twisted notion of "prejudice."

Respectfully submitted this 20th day of October, 2014.

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CERTIFICATE OF SERVICE

I certify that on this 20th day of October, 2014, I caused the foregoing to be electronically filed with the National Labor Relations Board at http://nlrb.gov and a copy of same to be served by e-mail on the following parties of record:

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION		
and	**Cases**	**03-CA-121293**
		03-CA-121579
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO		**03-CA-122766**
		03-CA-123346
		03-CA-123526
		03-CA-127024
		03-CA-126738
NOVELIS CORPORATION **Employer**		
and		
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO **Petitioner**	**Case**	**03-RC-120447**

Counsel for the General Counsel's Reply to Respondent's Motion for Your Honor to Reconsider Your Order To Preclude Evidence Regarding The Supervisor Status of Everett Abare

Counsel for the General Counsel (General Counsel) opposes Respondent's Motion for Your Honor to reconsider Your Order to preclude evidence regarding the supervisory status of Everett Abare (Abare). General Counsel submits that nothing raised by Respondent justifies Your Honor altering Your Order.

Respondent appears to claim that supervisory status is not an affirmative defense and that there is substantial record evidence regarding Abare's supervisory status. In making this argument Respondent relies heavily on a rationale based on the authorization cards. However, Respondent's assertions are a nullity based on the arguments that have previously been raised as well as those detailed herein.

Much of Respondent's argument appears to hinge on the concept that it must be able to raise Abare's supervisory status because it would not be aware of the identity of the card solicitors until the hearing. However, Respondent was aware at least since June 25, 2014, that Abare solicited a significant number of union authorization cards, as

ALJ Exh. 5(E)

this information was contained in the Petitioner's Memorandum of Law to the Northern District of New York. (See Petitioner's Memorandum of Law to the United States District Court for the Northern District of New York, Case 5:14-cv-00775-GLS-DEP, p. 15, "He solicited and obtained a large number of authorization cards."). Thus, the concept that Respondent was unaware of Abare's actions until the hearing is not applicable.[1]

Furthermore under the rationale of Montgomery Ward, 115 NLRB 645 (1965), enfd. 242 F.2d 497 (2d Cir. 1957), such a fact intensive inquiry as to whether Abare is a supervisor is unnecessary to determine whether the authorization cards he solicited are tainted. Given the circumstances, even assuming *arguendo* that Abare is a supervisor the cards he solicited would not be tainted. At the time Abare engaged in card solicitation, he was regarded by all parties as a statutory employee, which is embodied by Respondent placing him in the bargaining unit as evidenced by the Excelsior list (GC Exh. 11) and he was permitted to vote in the election. As the Board noted in Montgomery Ward, 115 NLRB 645, 647 (1956), when a supervisor is included in the unit by agreement of the parties and is permitted to vote in the election, the employees "obviously regard him as one of themselves" and his actions will be seen as that of a fellow employee, rather than as a supervisor. Therefore, his actions are not coercive, because he is not perceived as a supervisor. On this basis, in Montgomery Ward, it was found that the employer did not violate Section 8(a)(1) of the Act by the threats issued by an individual found to be a statutory supervisor, because he was included on the list of eligible voters and voted unchallenged in the election. Based on this same rationale, the Board in Times-Herald, 253 NLRB 524, 524 (1980), found that the actions of a supervisor in circulating a decertification petition was not a violation of Section 8(a)(1) of the Act for the supervisor was included in the bargaining unit.[2]

Here it is clear that Abare was regarded as a fellow employee, he was included on the Excelsior list and his vote was not challenged. In fact, beyond including Abare in the bargaining unit, Respondent also considered him a fellow employee as evidenced by its statements in its position paper to the Region as well as its Answer. (See Exhibit

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[1] Moreover, not to give this argument any validity, but to the extent Respondent advances the concept that it was not aware of Abare's actions until evidence was presented at the hearing, Abare testified on the first and second days of the hearing regarding the cards he solicited and Respondent did not assert its affirmative defense until the 15th day of the hearing, which constituted the seventh day of its case. Thus, Respondent clearly raised this affirmative defense well after it was aware of Abare's actions based on the testimony presented at the hearing.

[2] Furthermore to the extent Respondent cites to Harborside Healthcare, Inc., 343 NLRB 906 (2004), assuming *arguendo* Abare was considered a statutory supervisor the mitigating circumstances that he was he was included in the bargaining unit and voted unchallenged nullifies any such assertion of coercion. See Montgomery Ward, 115 NLRB 645, 647 (1956). Furthermore, established Board law holds generally that the conduct of a supervisor included in the bargaining unit by the parties is not attributable to his employer absent evidence the employer ratified, authorized or encouraged the conduct. See, AT & K Enterprises, 264 NLRB 1278 (1982); and Bennington Iron Works, 267 NLRB 1285 (1983).

C of General Counsel's Motion In Opposition to Respondent's Unpled Affirmative Defense that Everett Abare is a Statutory Supervisor Under the Act and Motion to Strike Supportive Testimony, (General Counsel's Motion). Thus, the entire fact intensive inquiry of supervisory status would not even result in relevant evidence in relation to the authorization cards and would just prolong the proceeding.

Beyond the authorization cards, Respondent is asserting Abare's supervisory status as an affirmative defense to the unfair labor practice allegations that by demoting Abare, Respondent independently violated Section 8(a)(1) of the Act (for it is alleged in the complaint that Abare's actions regarding the Facebook post constitute protected concerted activity) as well as Section 8(a)(3) of the Act. It is clear that supervisory status is an affirmative defense and if an affirmative defense is not pled it is waived. See e.g., Marquette Transportation, 346 NLRB 543 (2006)(supervisor an affirmative defense); Alterman Transport Lines, Inc., 308 NLRB 1282 (1992)(same); See also e.g., SEIU United Healthcare Workers-West, 350 NLRB 284, 284 fn. 1 (2007), enfd. 574 F.3d 1213 (9th Cir. 2009) (affirmative defense waived if not timely raised). While Respondent discusses cases such as The George Washington University, 346 NLRB 155 (2005) and Circus Circus Hotel, 316 NLRB 1235 (1995), as addressing the sufficiency of pleading the affirmative defenses, Respondent ignores that it failed to raise the affirmative defense of Abare's supervisor status at all. It is clear that such failure to actually raise an affirmative defense constitutes unfair surprise. See Ingraham v U.S., 808 F2d 1075 (5th Cir. 1987) (finding unfair surprise because had plaintiff's known of the affirmative defense they would have developed facts and evidence to prove other theories). As such it constitutes undue prejudice.

Respondent in attempting to distinguish Dole Fresh Vegetables, 339 NLRB 785 (2003) and St. Barnabas Hosp., 334 NLRB 1000 (2001) notes that respondents pled the affirmative defense of an employee's supervisory status. In so noting, Respondent attempts to argue that this does not mean it must be affirmatively pled, however, Respondent ignores that its very status as an affirmative defense that mandates that it must be affirmatively pled.

Furthermore, Respondent's argument that the Abare's supervisor status has been litigated in the hearing is completely false. As noted in the General Counsel's Motion any such testimony that even remotely bears on this matter concerns Abare's supposed leadership roles.

In addition, Respondent inaccurately claims that I.O.O.F. Home of Ohio, Inc. 322 NLRB 921 (1997) and Premier Healthcare, 331 NLRB 123 (2000) are not applicable. However, in those cases as in the instant case, Respondent is attempting to challenge the validity of a bargaining obligation by raising an employee's supervisory status which was already agreed upon by the parties.

Based on the foregoing reasons as detailed in the General Counsel's Motion and herein, the General Counsel respectfully requests Your Honor not reconsider or modify Your Order.

DATED at Syracuse, New York this
21st day of October, 2014

Respectfully submitted,

/s/ Linda M. Leslie

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CERTIFICATE OF SERVICE

I certify that on this 21st day of October, 2014, I caused the foregoing to be filed with Administrative Law Judge Michael Rosas by e-mail at michael.rosas@nlrb.gov and a copy of the same to be served by e-mail on the following parties of record:

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

Cases: 03-CA-121293
03-CA-121579
03-CA-122766
03-CA-123346
03-CA-123526
03-CA-127024
03-CA-126738

NOVELIS CORPORATION

Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

Petitioner

Case: 03-RC-120447

CHARGING PARTY'S RESPONSE TO RESPONDENT'S MOTION TO RECONSIDER ORDER PRECLUDING EVIDENCE CONCERNING THE SUPERVISORY STATUS OF EMPLOYEE EVERETT ABARE

Pursuant to Section 102.24 of the Board's Rules and Regulations ("Rules"), Charging Party United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers, International Union, AFL-CIO ("Charging Party" or "Union") submits this response to the motion for reconsideration ("Mot. for Recons.") of Respondent Novelis Corp. ("Respondent" or "Novelis"). For the reasons stated below, the October 16, 2014 Order of the

ALJ Exh. 5(F)

Administrative Law Judge ("ALJ") precluding Respondent from introducing evidence concerning the purported supervisory status of employee Everett Abare should remain undisturbed.

Throughout its motion, Respondent misstates Board law and distinguishes case law on spurious or superficial grounds. Your Honor correctly ruled that supervisory status is an affirmative defense that must be pled; that Novelis failed to plead Abare's status as an affirmative defense and, on the contrary, entered into a binding pre-election stipulation that he is an employee, not a supervisor; and, finally, that permitting Respondent to reposition its litigation stance in this proceeding at this late date would be unacceptably prejudicial.

First, contrary to Respondent's protestations (Mot. for Recons., pp. 2-5), it was properly ruled that Novelis has waived its right to challenge, on the ground of supervisor status, the validity of the authorization cards witnessed by Abare. While it is true that, under *Montgomery Ward & Co.*, 253 NLRB 196, 196-197 (1980), an employer may timely challenge an authorization card at the point of "cross-examination of the authenticating witness or the production of the signer's direct testimony[,]" that is not tantamount to allowing the employer, as Respondent seeks to do here, to withhold its position on an employee's purported supervisor status until the end of *its* case. As explained in *Montgomery Ward*, the rationale for the rule is, "the validity of the cards was questioned in a timely fashion which afforded sufficient notice to all parties that the issue was in dispute . . . ." *Id.* at 197. Here, the Respondent did not lay its intention bare, but instead withheld its position until the end of a lengthy trial.

This leads to the next canard, namely, that it would be unfair to preclude Novelis from raising the issue now because it was unaware of Abare's involvement in the union campaign until he testified ("Simply put, Respondent was never informed that Abare — or any other crew

leader — was a card solicitor until the Board introduced that evidence at trial." Mot. for Recons., p. 3). On the contrary, in the unlikely event it did not already actually know, Novelis was told so by the General Counsel three weeks *before* trial. Thus, on June 25, 2014, the Respondent was notified that Abare had "solicited and obtained a large number of authorization cards." On that day, the Regional Director filed her brief containing this information with the district court in the section 10(j) proceeding (Mem., p. 15).[1] Thus, Respondent's claim that it was never informed that Abare was a card solicitor until after the instant proceeding had commenced is false.

Moreover, Abare testified during the third day of trial on July 18, 2014. The Respondent then waited more than two months, including 12 more days of hearing, before raising the issue of Abare's purported supervisory status. The Respondent was correctly held responsible for the consequences of its delay.

Second, it was also correctly ruled that supervisory status is an affirmative defense that must be pled and is otherwise waivable. It is a well-established tenet of American jurisprudence that an affirmative defense is one that must be pled by the party with the burden of establishing it. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980); Federal Rules of Civil Procedure, Rule 8(c) ("In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense . . . ."). The purpose, of course, is to "to give the opposing party notice of the plea . . . and a chance to argue, if he can, why the imposition of [the affirmative defense]

[1] Memorandum of Points and Authorities in Support of Petition for Injunctive Relief Under Section 10(j) of the National Labor Relations Act, As Amended, 29 U.S.C. Section 160(j). A copy of relevant portions of the document is appended hereto.

would be inappropriate." *Blonder-Tongue Laboratories, Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 350 (1971).

"The burden of proving supervisory status rests with . . . the party asserting it." *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 786 (2003) (citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001)). Under Board law, therefore, supervisory status is an affirmative defense that must be pled, and it is waivable if not properly raised. *Springfield Manor*, 295 NLRB 17, 17, n. 2 (1989) (respondent not permitted to defend against § 8(a)(3) allegation on basis of alleged discriminatee's supervisory status where its answer did not assert supervisory status as an affirmative defense and its belated motion to amend pleading was denied).

Novelis's attempt to distinguish *Springfield Manor* is meritless (Mot. for Recons., pp. 8-9). The point at which the employer in that case moved to amend its pleading to add supervisory status as an affirmative defense — after the trial — is superficially distinguishable, but that does not alter the Board's holding. There, as here, the employer waited too long to raise the affirmative defense of supervisory status and it was therefore waived. That the employer *also* failed to establish the merits of its proposed defense merely provided an alternate basis for the result and did not undermine the holding on waiver of the affirmative defense.

Third, Respondent's attempt to explain away the Board's holding in *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921, 921-22 (1997) is without merit (Mot. for Recons., pp. 11-12). There the Board plainly held that its "axiomatic" rule barring an employer from re-litigating issues that were or could have been litigated in a prior representation proceeding applies in a refusal-to-bargain case where the employer attempts to disclaim a pre-election stipulation that included

the disputed employees in the bargaining unit. There is nothing in *I.O.O.F. Home of Ohio* to suggest that the principle underlying the Board's holding applies only in 8(a)(5) cases involving the testing of a certification order. Rather, it applies in all refusal-to-bargain cases.

Finally, the original motion to preclude was decided well within Your Honor's wide discretion. *See St. George Warehouse, Inc.*, 349 NLRB 17, 17, 26-27 (2007) (affirming ALJ's denial of respondent's motion to amend its answer to deny an employee's supervisory status where complaint clearly put respondent on notice and its motion was made after one and one-half days of trial); *Mingo Logan Coal Co.*, 336 NLRB 83, 83 (2001) (finding ALJ did not commit abuse of discretion in denying respondent's motion to amend its answer to deny employee's supervisory status not made until after first week of trial).

Accordingly, the Charging Party respectfully urges that the October 16, 2014 order precluding Novelis from introducing evidence that purports to show Abare was a statutory supervisor should remain undisturbed.

Dated: October 20, 2014

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

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CERTIFICATE OF SERVICE

I certify that on the 20th day of October 2014, I caused the foregoing to be filed with Administrative Law Judge Michael Rosas by email at michael.rosas@nlrb.gov and a copy of the same to be served by email on the following parties of record:

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

RHONDA P. LEY, Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

Petitioner

vs.

Case No. 5:14-cv-775 (GLS/DEP)

NOVELIS CORPORATION

ECF CASE

Respondent

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR INJUNCTIVE RELIEF UNDER SECTION 10(j) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, 29 U.S.C. SECTION 160(j)

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I. STATEMENT OF THE CASE

This petition in this proceeding was filed under Section 10(j) of the National Labor Relations Act (the Act), as amended, 29 U.S.C. Sec 160(j). The petition seeks a preliminary injunction pending the National Labor Relations Board's (Board) final administrative disposition of the Second Amended Consolidated Complaint (Complaint) issued by the Regional Director, Region 3. The Complaint alleges that Novelis Corporation (Respondent) committed unfair labor practices in violation of Section 8(a)(1), (3) and (5) of the Act, which effectively "nipped in the bud" the Union's organizing campaign and interfered with the exercise of employees' Section 7 rights.

This petition is based on the Petitioner's conclusion that there is reasonable cause to believe that Respondent committed the acts as charged. Once the Petitioner reached this conclusion, the Board is authorized under Section 10(j) of the Act to seek a temporary injunction to stop such unlawful conduct by petitioning the Court for relief. The Court may grant such relief when it is deemed just and proper.

A preliminary injunction is the only means to prevent Respondent from accomplishing its unlawful objective, specifically to deny employees the right to choose whether they wish to be represented by a union for purposes of collective-bargaining. In pursuit of that objective, Respondent coercively interrogated employees about their union activities, restored certain benefits, and threatened employees implicitly and directly with various consequences of selecting the Union as their bargaining representative including plant closure, a reduction in wages, more onerous working conditions including mandatory overtime, loss of business and loss of jobs. Respondent also disparaged the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Servicer Workers, International Union, AFL-CIO (Union) by asserting that the Union filed a charge concerning the unlawful restoration of premium pay and overtime benefits at a time

when no such charge had been filed, and threatened employees that it would lose these benefits and have to repay them retroactively. Respondent also disparately enforced and maintained unlawful solicitation and distribution policies whereby it prohibited pro-union postings and distributions, while permitting non-union and anti-union postings and distributions. Respondent prohibited employees from wearing union insignias on their uniforms, but allowed employees to wear anti-union and other insignias. Respondent solicited employee complaints and grievances and promised employees improved terms of employment if they did not select the Union as their bargaining representative. Respondent also maintains a social media policy that restrains employees' Section 7 rights under the Act. Since the representation election conducted on February, 20 and 21, 2014, Respondent has continued its unlawful conduct by demoting an employee who actively supported union representation. Thus, a preliminary injunction ordering, inter alia, interim restoration of the employee to his prior positions and a bargaining order, is the only means to restore the status quo and prevent irreparable harm to employees' Section 7 rights and the Board's remedial authority.

II. THE STATUTORY SCHEME PURSUANT TO WHICH INJUNCTIVE RELIEF IS SOUGHT; THE APPLICABLE LEGAL STANDARDS

Section 10(j) of the Act authorizes United States district courts to grant temporary injunctions pending the Board's resolution of unfair labor practice proceedings.

> The Board shall have power, upon issuance of a complaint as provided in subsection (b) [of this section] charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

This provision reflects Congressional recognition that the Board's administrative proceedings are often protracted and that in many instances, absent interim relief, a respondent could accomplish its unlawful objective before being placed under any legal restraint, thereby rendering a final Board order ineffectual. Kaynard v. Palby Lingerie, Inc., 625 F.2d 1047, 1055 (2d Cir. 1980); Seeler v. The Trading Port, Inc., 517 F.2d 33, 38 (2d Cir. 1975). Thus, Section 10(j) was intended to prevent the potential frustration or nullification of the Board's remedial authority caused by the passage of time inherent in Board administrative litigation. The Trading Port, Inc., 517 F.2d at 37-38; see also, Silverman v. Major League Baseball Player Relations Committee, Inc., 67 F.3d 1054 (2d Cir. 1995).

To resolve a 10(j) petition, a district court in the Second Circuit considers only two issues: whether there is "reasonable cause" to believe that a respondent has violated the Act and whether temporary injunctive relief is "just and proper." Kreisberg v. Healthbridge Management LLC, 732 F.3d 131, 141-42 (2d Cir. 2013); Hoffman v. Inn Credible Caterers, Ltd., 247 F.3d 360 (2d Cir. 2001); Kaynard v. MMIC, Inc., 734 F.2d 950, 953 (2d Cir. 1984); Murphy v. Hogan Transports, 1:13-mc-64 (N.D.N.Y. Nov. 22, 2013).

District Courts in this Circuit have granted 10(j) injunctive relief applying these standards. See, e.g., Dunbar v. Colony Liquor and Wine Distributors, 15 F.Supp. 2d 223 (N.D.N.Y. 1998); Ahearn v. House of Good Samaritan, 884 F.Supp. 654 (N.D.N.Y. 1995); Paulsen v. Renaissance Equity Holdings, LLC, 849 F.Supp. 2d 335 (E.D.N.Y. 2012); Dunbar v. Onyx Precision Services, Inc., 129 F.Supp.2d 230 (W.D.N.Y. 2000); Donner v. NRNH Inc., 163 LRRM 2033 (W.D.N.Y. 1999).

A. The "Reasonable Cause" Standard

In determining whether there is reasonable cause to believe that the Act has been violated,

the district court may not decide the merits of the case. Rather, the court's role is limited to determining whether there is "reasonable cause to believe that a Board decision finding an unfair labor practice will be enforced by a Court of Appeals." Kaynard v. Mego Corp., 633 F.2d 1026, 1032-33 (2d Cir. 1980) (quoting McLeod v. Business Mach. and Office Appliances Mechanics Conference Bd., 300 F.2d 237, 242 n. 17 (2d Cir. 1962)). The district court should not resolve contested factual issues; the Regional Director's version of the facts "should be given the benefit of the doubt" and, together with the inferences therefrom, "should be sustained if within the range of rationality." Palby Lingerie, Inc., 625 F.2d at 1051; Mego Corp., 633 F.2d at 1031. The district court should also not attempt to resolve issues of witness credibility. The Trading Port Inc., 517 F.2d at 37; Dunbar v. Onyx Precision Services, Inc., 129 F. Supp.2d 230, 235 (W.D.N.Y. 2000); Palby Lingerie, Inc., 625 F.2d at 1051-52, n. 5; Fuchs v. Jet Spray Corp., 560 F. Supp. 1147, 1150-51 n. 2 (D. Mass. 1983), aff'd per curium, 725 F.2d 664 (1st Cir. 1983).

Similarly, on questions of law, the district court "should be hospitable to the views of the [Regional Director], however novel." Mego Corp, 633 F.2d at 1031 (quoting Danielson v. Joint Bd. of Coat, Suit and Allied Garment Workers' Union, 494 F.2d 1230, 1245 (2d Cir. 1974)). The Regional Director's legal position should be sustained "unless the [district] court is convinced that it is wrong." Inn Credible Caterers, Ltd., 247 F.3d 360, 365, (quoting Palby Lingerie, 625 F.2d at 1047)).

B. The "Just and Proper" Standard

In the Second Circuit, injunctive relief is just and proper where it is necessary in order to prevent irreparable harm or to maintain the status quo. Inn Credible Caterers, Ltd., 247 F.3d at 367; Silverman v. Major League Baseball Player Relations Committee., 67 F.3d 1054, 1062 (2d Cir. 1995). The Second Circuit has recognized that Section 10(j) is among those "legislative provisions

calling for equitable relief to prevent violations of a statute" and that courts should grant interim relief thereunder "in accordance with traditional equity practice, as conditioned by the necessities of public interest which Congress has sought to protect." Morio v. North American Soccer League, 632 F.2d 217, 218 (2d Cir. 1980) (quoting The Trading Port, Inc., 517 F.2d at 39-40). In applying these principles, the Second Circuit has concluded that Section 10(j) relief is warranted where serious and pervasive unfair labor practices threaten to render the Board's processes "totally ineffective" by precluding a meaningful final remedy; where interim relief is the only effective means to preserve or restore the status quo as it existed before the onset of the violations; or where the passage of time might otherwise allow the respondent to accomplish its unlawful objective before being placed under any legal restraint. Mego Corp., 633 F.2d at 1033; Inn Credible Caterers, Ltd., 247 F.3d at 368; Palby Lingerie, Inc., 625 F.2d at 1055.

III. STATEMENT OF FACTS[1]

A. Background

On December 16, 2013, Everett Abare, Respondent's employee, contacted the Union and an organizing drive commenced at Respondent's Oswego, New York facility. The organizing drive involved approximately 599 production and maintenance employees.[2] Employees began signing union authorization cards designating the Union as their bargaining representative on December 16, 2013. Two days later on December 18, 2013, an employee told Bryan Gigon, a supervisor, that employee morale was terrible and that employees were talking about unionizing. On January 2,

[1] The facts relied on by the Regional Director are based on affidavits and documentary evidence obtained during the investigation of the unfair labor practice charges. Concurrent with the Petition, Petitioner has filed a motion requesting that the Court determine the injunctive petition on the basis of affidavits and documentary evidence. If that motion is granted, Petitioner intends to file a supplemental memorandum with specific references to the affidavits and other documentary evidence.

[2] Respondent manufactures rolled aluminum products. Most recently these products have been designed for the automotive industry.

2014,[3] the Union held its first open organizing meeting with about 70 employees in attendance and by January 8, the Union obtained signed cards from a majority of the employees, approximately 360 out of 599. The Union demanded recognition from Respondent in a letter mailed on January 8, which Respondent received on January 9. Respondent replied on January 13, 2014 denying the Union's request for recognition. The Union filed a representation petition with the Board seeking to represent employees as their exclusive collective-bargaining representative on January 13 and an election was held on February 20 and 21. The finally tally of the vote out of 599 eligible voters was 273 votes for Union representation, 287 votes against representation, 10 challenged ballots and 1 void ballot.

The organizing drive was precipitated by Respondent's rescission of certain benefits. Typically, Respondent announces its wage and benefit package for the upcoming calendar year in November. In mid-November 2013, just before the announcement would have been made, employees heard rumors that the 2014 package would eliminate Sunday premium pay[4] and Option C.[5] On November 14, 2013, employees inquired about the rumors concerning the benefit package and a supervisor confirmed that they were true. Upon receiving this confirmation, a department comprised of approximately 50 employees staged a work stoppage. Peter Sheftic, Respondent's Human Resource Manager, met with the employees and repeatedly demanded to know who organized the job action. The employees responded that it was a group action and that they were tired of losing benefits and wanted answers. At a certain point, employee Everett Abare took responsibility and indicated that he had called a safety time out because employees were so upset

[3] All dates are in 2014 unless otherwise noted.
[4] Respondent operates around the clock and employees had always received time-and-a-half pay for working on regularly scheduled Sundays.
[5] Option C refers to Respondent's practice of paying employees scheduled to work a paid holiday time-and-a-half pay for working that day and gives them the option of taking a day off at another time.

that he was afraid someone was going to get hurt. Sheftic confirmed that the rumors were true and after the employees agreed to return to work, he assured them that he would consult with corporate headquarters in Atlanta about their concerns.

In mid-December 2013, Chris Smith, Respondent's Plant Manager, and Sheftic met with employees and informed them that the rumored changes would be implemented on January 6. The changes included the elimination of Sunday premium pay and Option C, as well as the implementation of a high deductible health insurance plan, changes to pension benefits, and the possibility of a future change to the swing shift schedule. To offset the changes, Respondent announced a five percent pay increase and a $2,500 bonus. At the meeting, many employees expressed their opposition to the changes.

B. Restoration of the Premium Pay Benefit

On January 9, (after Respondent received the Union's demand for recognition), Smith and Sheftic informed crew leaders that they had heard their complaints and were restoring Sunday premium pay. In addition, Smith announced that if employees used personal time off or if a paid holiday fell in any week, that time would serve as a "bridge" to the 40 hour threshold to qualify for overtime pay. Smith told employees the restoration would be retroactive to January 6, the date the changes were scheduled to take effect. Later that day, Respondent announced the restoration of the benefits in an email to all employees.

C. Threats, Removal of Union Stickers and Interrogation

On January 23, Cold Mill Operations Leader Jason Bro held a meeting with several employees. During the meeting, Bro told employees that being an "employee-at-will" meant they did not have to work there if they did not like it. Bro talked about the decision employees would make in the upcoming union election and advised employees that even if they signed a union

authorization card, they still had the option to vote no. He then looked at an employee and asked, "so what are we going to do if we don't want this union?" The employee just stared at him. Bro continued to look at the employee and told him, "you are going to vote no." Bro asked again, "what are we going to do when we don't want the Union?" Bro pointed at the same employee and called his name, and the employee replied, "vote no." Bro asked a different employee, "how do you keep a union out of here?" The employee responded, "obviously, vote no." Bro went around to the remaining employees and asked each one the same question. Some responded, "vote no." Others did not respond. During the meeting, Bro also told two employees they were not allowed to wear the pro-union stickers they had on their uniforms. One employee asked Bro why when the PMG mechanics were wearing "no union" stickers. Bro stated he was unaware of it.

At the facility, employees are allowed to wear stickers expressing other sentiments. PMG mechanics wore "no union" stickers on their uniforms while talking to various supervisors including Warren Smith, Craig Formoza, Andrew Biggs and Paul Elia. Employees were also allowed to wear stickers that said "one more chance, one more year…".[6]

On or about January 30, Bro discussed the upcoming election with several employees. During this discussion, he told the employees where the vote would occur and that he wanted everyone to vote. Much like he did at the meeting a week earlier, Bro then asked, "guys, if you don't want a union in here, how do you vote?" Bro looked at them one-by-one. The employees did not respond. Then Bro asked a specific employee how he would vote if he did not want a union, and the employee replied that if the Union lost, "they were going to take it in the ass." The employee then asked Bro, "if I wanted a Union in here, how do I vote?" Bro answered that if he wanted a union, then he voted yes. The employee turned to the guys and said, "you heard him. Vote

[6] During a meeting on February 17, 2014, detailed herein, Plant Manager Smith voiced his appreciation for the employees wearing such stickers.

yes." Bro stated he was not telling anyone how to vote; it was their decision. When another employee entered the room, Bro asked him how to vote if he didn't want the Union. The employee replied that he just would not vote.

On January 28, CASH Manufacturing Unit Manager Craig Formoza engaged in threatening behavior toward employees, including an interrogation, threats of job loss and more onerous working conditions. Formoza approached an employee in his work area and asked him how he felt about the Union. The employee changed the subject and Formoza again asked him how he felt about the Union. Before the employee answered, Formoza stated that if the Union was elected, Respondent could change to an S-21 work schedule. Employees working an S-21 schedule are required to work seven days in a row with only one day off and then work seven more days in a row with two days off. As a result, an S-21 schedule requires fewer crews and would likely result in lay-offs. Formoza then asked the employee where he stood in seniority.[7]

D. Solicitation Distribution

Respondent maintains a solicitation and distribution rule that impinges on employees' Section 7 rights. Section 7 of the Act grants employees the right to form, join, or assist labor organizations and bargain collectively or to refrain from such activities. Respondent's policy states in pertinent part that "Novelis prohibits solicitation and distribution in working areas of its premises and during working time (including Company email or any other Company distribution lists)." It further states:

> The Company maintains bulletin boards to communicate Company information to employees and to post required notices. An unauthorized posting of notices, photographs or other printed or written materials on bulletin boards or in other working areas and during working time is prohibited.

[7] The employee was fairly new and had relatively low seniority.

> **Employees are prohibited from soliciting funds or signatures, conducting membership drives, posting, distributing literature or gifts, offering to sell or to purchase merchandise or services (except as approved for Novelis business purposes) or engaging in any other solicitation, distribution or similar activity on Company premises or via Company resources during working times and in working areas.** (emphasis added)

Respondent further effectuated its policy by asserting that it prohibited all Section 7 distribution and posting whether in support of or against the Union during the organizing campaign.

Notwithstanding its policy, Respondent historically allowed employees to use the bulletin boards in the facility for posting community events, golf outings, employee items for sale, charity benefits, etc. However, during the pre-election period, Respondent routinely removed pro-union literature from the community bulletin boards in both work and break areas and prohibited employees from displaying pro-union literature on numerous occasions. On or about January 12, Bro came into the pulpit work area where employees work and regularly take breaks and saw two pieces of campaign literature in the work area. One paper compared how much money employees would lose with the changes Respondent implemented even after restoring Sunday premium pay and the other encouraged employees to vote yes. Bro told the employee that the paper with the comparison could remain in the area, but that the second paper, urging employees to vote yes, could not. Bro then asked him who put the papers there. Before the employee could answer, Bro named two employees and then asked if it was Everett Abare.

On or about January 21, Remelt Operations Leader Duane Gordon entered the control room/break room, picked up pro-union literature on the table and replaced it with anti-union literature. Also on that day, Gordon entered the cabana/office/break room, removed pro-union literature and replaced it with anti-union literature entitled "Know the Facts," and Bro removed union literature from the community bulletin board in the hallway.

On or about January 23, Remelt Engineering Maintenance Reliability and Automation Leader Tom Granbois was in the cafeteria when an employee hung a union flyer on the bulletin board informing employees about a union meeting scheduled for Sunday. While another employee was reading the flyer, Granbois ripped it down and threw it out. On the same day, supervisors, Shipping Receiving and Packaging Associate Leader Dan Taylor and Jason Bro removed union literature from the bulletin board and the work area in the furnace room, including the USW handbook, a page of "vote yes" stickers, and fact sheets about the Union that were on the clip boards.[8]

E. Solicitation of grievances

Respondent also solicited employees' grievances. On or about February 15, Andy Quinn, a human resource representative, made a rare visit to the plant floor and spoke with three employees. Quinn asked the employees for their opinions on how things were going in the plant and inquired whether employee morale could recover. The employees offered their assessments. During this exchange, Quinn said that if employees voted no " it will never be as good as it was, but it will be better than it is now" and added that if the employees voted against representation, Respondent could get back to making things better, but it could not make any changes at that time.

F. Unlawful Threats at Captive Audience Meetings Attended by All Employees

Just before the election, which occurred on February 20 and 21, Respondent held three mandatory employee meetings (captive audience meetings) attended by all employees. The first meeting was held on February 17 at 5:30 p.m., the second meeting on February 18 at 5:30 a.m., and the third meeting on February 18 at 5:30 p.m. At each meeting, Phil Martens, Respondent's President and Chief Executive Officer, Marco Palmieri, Respondent's Senior Vice President and

[8] Employees routinely ate their lunch in the furnace room and have never been restricted from having personal items such as newspapers or magazines in the room.

President and Chris Smith, Respondent's Plant Manager, spoke to employees.[9] Employees rarely saw Martens at the facility and had never seen Palmieri. There were also numerous supervisors present. The meetings lasted between 35 to 45 minutes. During the course of these meetings, Respondent threatened employees with negative consequences if they selected the Union as their bargaining representative. At the first two meetings, Respondent also disparaged the Union and misled employees by using a redacted version of a letter from a Board agent.

1. Disparaged the Union and Misled Employees

At the first and second meetings, Martens held up a redacted version of the Board's request for evidence letter showing only the Board's request that Respondent respond to the allegation that it restored a benefit (the Sunday premium pay) in response to the union organizing drive.[10] Martens told employees that he wanted to talk to them about the Union. He told them that they were told by the Union that they filed no grievances, but right here is a letter from the NLRB showing filed grievances. Martens implied that the Union was not truthful with the employees and told them that this is who the employees were dealing with, but that is not who he is or what the company is about.

At the same meetings, Smith asked employees how many of them knew that the Union filed a charge against Respondent for making those "concessions" four weeks ago (referring to reinstatement of the Sunday premium pay and implementing the bridge to overtime). Smith told employees that if Respondent pled guilty, those concessions would come off the table and be retroactive to the first of January.

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[9] Each meeting was recorded.

[10] The Union had not filed a charge alleging the restoration of the benefit as a violation at that time. However, the Board agent's investigation up to that point revealed it as a possible violation of the Act, and she decided to solicit Respondent's position.

2. Implied Threat of Plant Closure

At the first meeting, Martens told employees that he made the personal decision to close the Saguenay, Quebec plant and lay off 140 employees rather than lay people off at the Oswego plant.[11] He stated that the Oswego plant lost the Ball business and was looking at a layoff of 200 to 300 employees but he decided to allocate the Saguenay product into the Oswego plant and made a commitment to the Oswego plant and its employees. Martens stressed that this was a personal decision he made for them rather than a business decision.

At the second meeting, Martens told employees that he was forced to make a decision to either lay off 200 to 300 people in Oswego or to support them. He further stated that he made the decision to close Saguenay, which resulted in the loss of 140 jobs, and the Saguenay employees had no input on that decision. Martens told employees that when they talk about the decision employees will have to make regarding unionization, he wanted them to know that his support for the Oswego plant has been second to none and the decisions he made benefited them, while employees in Saguenay lost their jobs. Martens told employees that this was personal for him, that he made a tremendous effort to support the Oswego employees and will continue to do that.

At the third meeting, Martens similarly emphasized that his decision to move work to Oswego at the expense of the employees in Saguenay was a personal decision, but if the employees unionized he would be forced to make business decisions rather than personal decisions.

3. Threat of more onerous working conditions and reduced pay

At the first meeting, Smith stated, "Look at the people sat (sic) next to you. If a union comes in here, we're going to lose people. We're going to lose those people in the same row, on the same shifts that you work with, same crews; they're going to go elsewhere because their career is

[11] During this and the other meetings, Martens stressed more than once that 140 people lost their jobs "when I closed Saguenay" and moved work from there to Oswego. The plant closed in 2012.

going to be stunted. They won't like the atmosphere and the rigor in which we have to abide by with the rule books, the things that we've taken for granted."

At the same meeting, Martens stressed to employees that it would be cheaper for the company if they voted yes and that a yes vote would result in a business decision and that the base line for the start is not where they are today, that their start is the same level as the Terre Haute and Fairmount agreements which "are much different and must [sic] less supportive of the lifestyle that you want."[12]

At the second meeting, Martens stated that if employees unionized, a lot of things would come into play and a lot of things go away. Martens referenced forced overtime, lower money and lower annual compensation, and again told employees they should look at the Fairmount and Terre Haute packages as a starting point and that the employees at those plants make less money and do not have the same benefit structure. Martens further stated that the overall cost for the company was less at those plants, but the Oswego employees' decision to vote yes would be absolutely the wrong decision because both the employees and Respondent want flexibility. Martens told the employees that they want higher wages and Respondent wants to pay them higher wages. In summing up his reasons for voting "no" at this meeting, Martens said " I don't want this to become a business decision. I don't want to go down that path…." Martens concludes his remarks by reminding employees again from a "personal point of view" of all the big decisions he made to support them.

4. Threat of loss of business

At the first meeting, Smith spoke about the direction the company is going in and the work involved in securing a six-year contract with Ford to supply aluminum for its F-150 trucks. Smith

[12] Terre Haute, IN and Fairmount, VA sites are represented by the Union.

told employees about the dangers to Respondent's success, including competition and the Union. He told employees he did not envision having to work with a potential third party who knows little about the business, and he was concerned that the Union will result in a distracted work force, something they cannot afford to live with if they are to be successful long term. Smith told employees that the next 12 months are critical and that the customer has options going forward and they do not want to give Ford a reason to look outside of Novelis or Oswego.

At the second meeting, Smith told employees that the contracts with their customers are in place and it was theirs to lose. Smith asked employees when else in their careers have they been given a secure job. Smith told employees that it was not a "God given right that all our investments are going to keep coming here if we don't deliver" and added that he never anticipated the possibility of dealing through a third-party and there was no way they could be successful being represented by someone who has limited to no knowledge of their business and no understanding of the commitments that they have from a contractual point of view with their customers. Smith asked employees how the Union was going to be anything other than a distraction from what they do on a day-to-day basis.

G. Demotion of Abare and the Social Media Policy

Everett Abare was a union supporter, who, as detailed above, helped initiate the union organizing campaign. He took responsibility for organizing the work stoppage in November when employees heard about the changes in their wage and benefit package. He contacted the Union and openly admitted his role in doing so to other employees. He solicited and obtained a large number of authorization cards. As noted above, Jason Bro identified Abare as a union supporter no later than January 12. Abare also served as a union observer at the election.

In his sixteen years of employment with Respondent, Abare held a number of leadership roles in the plant. Most recently, he served as a non-supervisory crew leader, in Respondent's in-house fire department, on its plant EMT squad and he was an employee member of the training and safety committees. For at least one of these roles, he received a two dollar per hour wage premium and enjoyed preferred parking as a result of his service in the fire department.

On March 29, Abare, on his own computer from home, posted his reaction to a recent paycheck on his personal Facebook page. Abare's post states in its entirety:

> As I look at my pay stub for the 36 hour check we get twice a month, One worse than the other. I would just like to thank all the F*#**KTARDS** out there that voted "NO" and that they wanted to give them another chance…! The chance they gave them was to screw us more and not get back the things we lost….! Eat $hit "NO" Voters….

This type of profanity is commonly used on the plant floor.

On April 4, Abare was summoned to a meeting with Human Resource Manager Andy Quinn and Cold Mill Manager Greg Dufore concerning this post. They confronted him with his post and expressed their "concern" with his remarks and how they affected his suitability for the leadership roles he held. Quinn told him that although Abare might not be aware of it, Respondent had a social media policy and gave him a copy. Abare offered to apologize and Quinn told him that although his willingness to apologize would factor into their consideration of what Respondent was going to do, Respondent was going to give him time to think about his actions and it would make a decision about his continued service in his leadership roles the following week.

On April 11, Quinn and Dufore met with Abare and informed him that Respondent was removing him from all the leadership roles and stripping him of the benefits and privileges that came with them. During this meeting, they suggested that the changes might not be permanent, but that the ball was now in his court.

Respondent's written disciplinary policy indicates that a demotion of the type imposed on Abare is inappropriate for a first offense such as this. The disciplinary policy states, in pertinent part, "there shall be no disciplinary demotions, suspensions, or other forms of punishment as normal means of disciplining employees" and indicates first time offenses will be addressed with an informal friendly reminder from the supervisor to be followed by a summons to a supervisor's office for a serious but friendly conversation. Abare had never been disciplined prior to this occasion.

In addition, the social media policy presented to Abare at his disciplinary meeting is overly broad and inhibits employee's Section 7 rights. In this regard, the social media policy states that an employee who takes a position online that is counter to Respondent's interests might cause conflict and could be subject to discipline. It also forbids employees from speaking on behalf of **or about** (emphasis added) Respondent without prior authorization. Finally, the policy urges employees to be a "scout for compliments or criticism" and to report such comments to management.

H. The Union's Card Majority And Loss Of Support

Respondent provided the names of 599 employees who were on the payroll as of January 12. The Union obtained a total of 362 authorization cards signed by employees stating that they wanted the Union as their exclusive collective-bargaining representative, and provided these cards to the Board in support of the petition for election filed in Region 3 of the Board on January 13.

The unlawful threats and other statements made by Respondent at the captive audience meetings coupled with its other conduct had a significant impact on employees' support for the Union. Union support was reportedly strong prior to the captive audience meetings. Afterward, employees' support for the Union wavered.

Employees testified that the mood of employees changed entirely after listening to the speech by Martens, the CEO of the company. Witnesses testified that they felt that their jobs had been threatened and they were intimidated by Marten's remarks. Employees were particularly troubled by the possibility of having to repay their premium pay and attributed this prospect to the Union.

Union representative Jim Ridgeway fielded numerous telephone calls from employees about their concerns after the meetings. Ridgeway asserts that his phone began ringing at approximately 6:45 p.m. on February 17 when the first captive audience meeting ended and continued until the early morning hours of 2:00 a.m. on February 18. He received calls from employees who attended the first meeting as well as employees who had not attended the meeting, but heard about what was said from other employees. Employees told him that Martens held up an altered document from the NLRB that Martens claimed was a grievance and told them it was filed by the Union because the company had given them back premium pay for Sunday work. According to Ridgeway, even the in-plant Union organizing committee members questioned Ridgeway as to why they were not informed that the Union filed this charge. Ridgeway explained to the callers that it was not true and that the Union never filed a charge regarding this issue. Ridgeway testified that he had employees call him that he had never heard from before, yelling at him that he had lied and that they would have to pay back the Sunday premium pay; some even stated that they would have to pay the money back with interest. Ridgeway testified that after he answered employees' questions regarding Sunday premium pay, they raised concerns about possible layoffs, loss of wages, and Phil Martens' remarks about making "business decisions" if the Union was elected.

Ridgeway testified that 90 to 95 percent of the callers' first concern after the first and second captive audience meetings was the alleged Board charge regarding Sunday premium pay. Once he

had responded to that, they spoke of their concern about layoffs, loss of wages and the fear of job loss. Ridgeway stated that prior to the captive audience meetings, union support was strong and he was optimistic that they would win the election. After the captive audience meetings, he was not so sure. As evidenced by the vote at the representation election, the Union clearly lost the support of the majority of employees.

Because Respondent's unfair labor practices have undermined employees' once strong support for the Union and because its unlawful conduct has rendered impossible a fair rerun election, the Second Amended Consolidated Complaint seeks a bargaining order under the Supreme Court's decision in NLRB v. Gissel Packing Co., 395 U.S. 575 (1969), requiring Respondent to recognize and bargain with the Union based on evidence that a majority of employees signed authorization cards.[13] A bargaining order is necessary because Respondent's pervasive and flagrant violations, as detailed herein, are so serious and substantial that the possibility of erasing their effects and conducting a fair election by the use of traditional remedies is slight. Under such circumstances, the employees' signatures on union authorization cards are the more accurate reflection of their desire for union representation. Accordingly, employees' Section 7 rights would be better protected by issuance of a bargaining order than by traditional remedies alone.

IV. ARGUMENT

In the Second Circuit, the standard for granting Section 10(j) relief is whether there is "reasonable cause" to believe the violations occurred and whether the relief requested is "just and proper." See Kreisberg v. Healthbridge Management LLC, 732 F.3d 131, 141-42 (2d Cir. 2013), Kaynard v. MMIC,Inc., 734 F.2d 950 (2d Cir. 1984), and cases cited therein; Hoffman v. Inn Credible Caterers, Ltd., 247 F.3d 360 (2d Cir. 2001).

[13] The Supreme Court's decision in Gissel Packing is discussed in detail infra.

3-CA-121293
CASE NUMBER
EXHIBIT NUMBER: ALJ-7(A)
ID'D ~ REC'D
DATE
10/21/14

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

Cases: **03-CA-121293**
03-CA-121579
03-CA-122766
03-CA-123346
03-CA-123526
03-CA-127024
03-CA-126738

NOVELIS CORPORATION **Case:** **03-RC-120447**

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

NOVELIS CORPORATION'S MOTION TO FILE SECOND AMENDED ANSWER TO SECOND CONSOLIDATED COMPLAINT

Novelis Corporation ("Novelis"), Respondent in the above-styled action, hereby submits this motion to the Administrative Law Judge ("ALJ") to file a Second Amended Answer to the General Counsel's Second Consolidated Complaint.[1] As set forth in Respondent's briefing in

[1] Novelis brings this this motion because the ALJ ruled that Novelis failed to sufficiently plead supervisory status as an affirmative defense. Although Novelis respectfully submits that the ALJ is mistaken in his analysis and conclusion, Novelis asserts that even if the ALJ's analysis and conclusion are accurate, this amendment is only necessary as to Novelis' defense of the Second Consolidated Complaint's 8(a)(3) allegation and is not necessary to Novelis' argument that the union authorization cards Everett Abare solicited are invalid under prevailing Board precedent and may not be considered in determining whether the Union established majority support, *see Harborside Healthcare, Inc.*, 343 NLRB 906 (2004). To the extent Novelis amends its answer to explicitly reference its argument that the union authorizations cards solicited by Abare are invalid under Board precedent and may not be considered in determining whether the Union established majority support, it does so only out of an extreme abundance of caution and in doing so does neither makes any admission nor acknowledges the legitimacy of any of the arguments of the General Counsel or Charging Party in this regard.

ALJ-7(A)

support of the introduction of evidence pertaining to Everett Abare's supervisory status and at the hearing, Respondent submits that the filing of this amended answer will not prejudice to the General Counsel or the Charging Party. To the extent it amounts to any prejudice, this prejudice is outweighed by the prejudice that would befall Novelis should it not be permitted to file an amended answer.

Further, as noted in Respondent's briefing, the amendment should be permitted under Federal Rule of Civil Procedure 15(b)(1) (admonishing federal courts to "freely permit" amendments made during trial when doing so "will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits") (cited with approval in ALJ's Bench Book § 3-500). Additionally, Federal Rule of Civil Procedure 15(b)(2) provides an independent ground for amendment based upon Counsel for General Counsel's opening of the door on Abare's supervisory status ("When an issue not raised by the pleadings is tried by the parties' express or implied consent, ***it must be treated in all respects as if raised in the pleadings.*** A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.") (emphasis added).

Attached hereto as Exhibit A is the proposed Second Amended Answer.

Respectfully submitted this 20th day of October, 2014.

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CERTIFICATE OF SERVICE

I certify that on this 20th day of October, 2014, I caused the foregoing to be electronically filed with the National Labor Relations Board at http://nlrb.gov and a copy of same to be served by e-mail on the following parties of record:

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EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

Cases: **03-CA-121293**
03-CA-121579
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03-CA-123346
03-CA-123526
03-CA-127024
03-CA-126738

NOVELIS CORPORATION

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

Case: **03-RC-120447**

NOVELIS CORPORATION'S SECOND AMENDED ANSWER TO SECOND CONSOLIDATED COMPLAINT

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, Novelis Corporation ("Novelis"), by undersigned counsel, submits this Second Amended Answer to Second Consolidated Complaint in response to the Second Consolidated Complaint and Notice of Hearing ("Complaint")[1] and denies that it committed unfair labor practices as set

[1] Novelis submits this amended answer because the ALJ ruled that Novelis failed to sufficiently plead supervisory status as an affirmative defense. Although Novelis submits that the ALJ is mistaken in his analysis and conclusion, Novelis submits that even if the ALJ's analysis and conclusion are accurate, this amendment is only necessary as to Novelis' defense of the Second Consolidated Complaint's 8(a)(3) allegation and is not necessary to Novelis' argument that the union authorization cards Everett Abare solicited are invalid under prevailing Board precedent and may not be considered in determining whether the Union established majority support, *see Harborside Healthcare, Inc.*, 343 NLRB 906 (2004). To the extent Novelis amends its answer to reference its argument that the union authorizations cards solicited by Abare are invalid under Board precedent and may not be considered in determining whether the Union established majority support, it does so only out of an extreme abundance of caution

forth in the National Labor Relations Act, 29-U.S.C. § 151, *et seq.* ("the Act").[2] Novelis employees voted against the United Steelworkers in a fair secret ballot election. The Complaint seeks to overturn through litigation the majority of votes which, in turn, would disenfranchise those employees who voted against the United Steelworkers by overriding their Section 7 rights. The Complaint also attacks Novelis's lawfully exercised free speech rights that it used to educate employees about the track record of the United Steelworkers and the risks associated with having such an organization represent Novelis employees. Novelis therefore denies all allegations not expressly admitted herein and further responds as follows:

I.

(a) Novelis admits the allegations contained in Paragraph I.(a) of the Complaint.

(b) Novelis admits the allegations contained in Paragraph I.(b) of the Complaint.

(c) Novelis admits the allegations contained in Paragraph I.(c) of the Complaint.

(d) Novelis admits the allegations contained in Paragraph I.(d) of the Complaint.

(e) Novelis admits the allegations contained in Paragraph I.(e) of the Complaint.

(f) Novelis admits the allegations contained in Paragraph I.(f) of the Complaint.

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and in doing so does neither makes any admission nor acknowledges the legitimacy of any of the arguments of the General Counsel or Charging Party in this regard.

[2] Novelis hereby incorporates its Answer to Amendment to Second Consolidated Complaint, filed on June 25, 2014.

(g) Novelis admits the allegations contained in Paragraph I.(g) of the Complaint.

(h) Novelis admits the allegations contained in Paragraph I.(h) of the Complaint.

(i) Novelis admits the allegations contained in Paragraph I.(i) of the Complaint.

(j) Novelis admits the allegations contained in Paragraph I.(j) of the Complaint.

II.

(a) Novelis admits the allegations contained in Paragraph II.(a) of the Complaint.

(b) Novelis admits the allegations contained in Paragraph II.(b) of the Complaint.

III.

Novelis admits the allegations contained in Paragraph III of the Complaint.

IV.

Novelis admits the allegations contained in Paragraph IV of the Complaint.

V.

Novelis denies the allegations in Paragraph V because the phrase "at all material times" is vague and unclear. Novelis admits that the following employees were or are supervisors and/or agents of Novelis at certain time periods relevant to the Complaint: Phil Martens, Marco Palmieri, Chris Smith, Tom Granbois, Duane Gordon, Jason Bro, Dan Taylor, Doug Borer, Warren Smith, Andrew Biggs, Paul Elia, Craig Formoza, Peter Sheftic, Greg Dufore, Brian

Gigon, and Andy Quinn. Novelis denies that Sheftic continues to be employed by Novelis and served in a supervisor and/or agent of Novelis "at all material times", that Quinn served and currently serves in the position articulated, that Biggs currently serves in the position articulated, that DuFore served and serves in the position articulated, that Bro continues to serve in the position articulated and has served as a supervisor and/or agent of Novelis "at all material times" and that Borer continues to serve in the position articulated and has served as a supervisor and/or agent of Novelis "at all material times."

VI.

Novelis denies the allegations contained in Paragraph VI of the Complaint.

VII.

(a) Novelis denies the allegations contained in Paragraph VII.(a) of the Complaint.

(b) Novelis denies the allegations contained in Paragraph VII.(b) of the Complaint.

(c) Novelis denies the allegations contained in Paragraph VII.(c) of the Complaint.

(d) Novelis denies the allegations contained in Paragraph VII.(d) of the Complaint.

VIII.

(a) Novelis denies the allegations contained in Paragraph VIII.(a) of the Complaint.

(b) Novelis denies the allegations contained in Paragraph VIII.(b) of the Complaint.

(c) Novelis denies the allegations contained in Paragraph VIII.(c) of the Complaint.

(d) Novelis denies the allegations contained in Paragraph VIII.(d) of the Complaint.

(e) Novelis denies the allegations contained in Paragraph VIII.(e) of the Complaint.

IX.

(a) Novelis denies the allegations contained in Paragraph IX.(a) of the Complaint.

(b) Novelis denies the allegations contained in Paragraph IX.(b) of the Complaint.

(c) Novelis denies the allegations contained in Paragraph IX.(c) of the Complaint.

X.

(a) Novelis denies the allegations contained in Paragraph X.(a) of the Complaint.

(b) Novelis denies the allegations contained in Paragraph X.(b) of the Complaint.

(c) Novelis denies the allegations contained in Paragraph X.(c) of the Complaint.

(d) Novelis denies the allegations contained in Paragraph X.(d) of the Complaint.

XI.

Novelis denies the allegations contained in Paragraph XI of the Complaint.

XII.

(a) Novelis denies the allegations contained in Paragraph XII.(a) of the Complaint.

(b) Novelis denies the allegations contained in Paragraph XII.(b) of the Complaint.

(c) Novelis denies the allegations contained in Paragraph XII.(c) of the Complaint.

XIII.

(a) Novelis denies the allegations contained in Paragraph XIII.(a) of the Complaint.

(b) Novelis denies the allegations contained in Paragraph XIII.(b) of the Complaint.

(c) Novelis denies the allegations contained in Paragraph XIII.(c) of the Complaint.

(d) Novelis denies the allegations contained in Paragraph XIII.(d) of the Complaint.

XIV.

(a) Novelis denies the allegations contained in Paragraph XIV.(a) of the Complaint and expressly states that Abare was not an employee under Section 2(3) of the Act but rather was a supervisor within the meaning of Section 2(11) of the Act before and on March 29, 2014 and is therefore unprotected by the Act.

(b) Novelis admits only the allegation that in Paragraph XIV.(b) of the Complaint that it demoted Abare on April 11, 2014. Novelis denies that Abare was an employee under Section 2(3) of the Act during the time in question and expressly states that Abare was a supervisor within the meaning of Section 2(11) of the Act and therefore unprotected by the Act before and at the time he was demoted.

(c) Novelis denies the allegations contained in Paragraph XIV.(c) of the Complaint and expressly states that Abare was not an employee under Section 2(3) of the Act but rather was a supervisor within the meaning of Section 2(11) of the Act during the time period relevant to the allegations in Paragraph XIV and is therefore unprotected by the Act.

(d) Novelis denies the allegations contained in Paragraph XIV.(d) of the Complaint and expressly states that Abare was not an employee under Section 2(3) of the Act but rather was a supervisor within the meaning of Section 2(11) of the Act during the time period relevant to the allegations in Paragraph XIV and is therefore unprotected by the Act.

XV.

(a) Novelis admits the allegations contained in Paragraph XV.(a) of the Complaint.

(b) Novelis denies the allegations contained in Paragraph XV.(b) of the Complaint.

(c) Novelis admits the allegations contained in Paragraph XV.(c) of the Complaint.

(d) Novelis denies the allegations contained in Paragraph XV.(d) of the Complaint.

XVI.

Novelis denies the allegations contained in Paragraph XIV of the Complaint.

XVII.

Novelis denies engaging in any wrongful conduct and denies that there is any basis whatsoever for imposition of a bargaining order that would override the free choice made by a majority of employees in the election. Novelis denies engaging in any unlawful acts. Novelis denies all other the allegations contained in Paragraph XVII.

XVIII.

Novelis denies that it has any obligation to recognize and bargain with the Union. Employees voted against union representation in a fair secret ballot election and that result cannot be overturned without violating the Section 7 rights of the employees who freely voted against union representation and the free speech rights of Novelis. Novelis denies the allegations of Paragraph XVIII.

XIX.

Novelis denies the allegations contained in Paragraph XIX of the Complaint.

XX.

Novelis denies the allegations contained in Paragraph XX of the Complaint.

XXI.

Novelis denies the allegations contained in Paragraph XXI of the Complaint.

XXII.

Novelis denies engaging in unfair labor practices and therefore denies the allegations in Paragraph XXII.

WHEREFORE, Novelis denies engaging in any unlawful conduct and denies that any remedy would be necessary or proper. Novelis denies that an Order requiring that a Notice be read to employees during working time by Mr. Martens or Mr. Smith in the presence of a Board Agent is appropriate.

AFFIRMATIVE AND OTHER DEFENSES

Without waiving or excusing the burden of proof of the General Counsel, or admitting that Novelis has any burden of proof, Novelis hereby asserts the following affirmative or other defenses:

FIRST DEFENSE

The Complaint should be dismissed because Novelis has not interfered with, restrained or coerced any employee (Novelis expressly states that Abare was not an employee under Section 2(3) the Act during all relevant periods before and up to the time of his demotion but rather was a supervisor within the meaning of Section 2(11) of the Act) in violation of the Act in the exercise of any rights he had under Section 7 of the Act, the Company did not take any adverse action against any employee under the Act, and no agent or supervisor of Novelis within the meaning of the Act took any unlawful act which affected employee free choice.

SECOND DEFENSE

The Compliant should be dismissed in part expressly states because Abare was not an employee under Section 2(3) of the Act but rather was a supervisor within the meaning of Section 2(11) of the Act during the time period relevant to the allegations in Paragraph XIV. Therefore, Abare is not protected by the Act.

THIRD DEFENSE

The Complaint should be dismissed because Novelis did not take any actions in violation of the Act and has acted at all times in accordance with the Act and applicable NLRB precedent.

FOURTH DEFENSE

The Complaint should be dismissed in part because certain allegations, even if true, do not violate the Act.

FIFTH DEFENSE

The Complaint should be dismissed in part because even if Novelis took actions in response to protected concerted activity, which Novelis expressly denies (including by denying that any conduct taken by Abare was protected, as Abare was a supervisor within the meaning of Section 2(11) of the Act and not an employee under Section 2(3) of the Act), Novelis would have taken the same conduct even in the absence of protected concerted activity.

SIXTH DEFENSE

The Complaint should be dismissed in part because Novelis is permitted to express or disseminate views, arguments, or opinions, as long as such expression contains no threat of reprisal or force or promise of benefit.

SEVENTH DEFENSE

The Complaint should be dismissed in part because certain aspects impermissibly attack Novelis' rights of free expression.

EIGHTH DEFENSE

The Relief sought should be denied as inconsistent with the Act and unwarranted under the circumstances.

NINTH DEFENSE

The Complaint should be dismissed in part because even assuming that Abare engaged in legally cognizable concerted activity under the Act on March 29, 2014, which Novelis denies, such activity was not protected under the Act, including not limited to for the reason that Abare

was not an employee under Section 2(3) of the Act but rather was a supervisor within Section 2(11) of the Act.

TENTH DEFENSE

The Relief sought pertaining to the issuance of a bargaining order is inappropriate and inconsistent with the Act because it cannot be demonstrated that the possibility of conducting a fair rerun election is slight, it is inconsistent with the Section 7 rights of employees to not join unions, to vote against unions and to actively oppose unions, the General Counsel cannot carry its burden in demonstrating that the Union ever had majority support and even if it could, the reasons for loss of majority support are unrelated to any alleged unlawful conduct by Novelis.

ELEVENTH DEFENSE

The Relief sought pertaining to the issuance of a bargaining order is inappropriate and inconsistent with the Act, because the Union never enjoyed majority support, including because authorization cards were procured under false pretenses and because cards were procured by individuals that were supervisors within the meaning of Section 2(11) of the Act.

TWELFTH DEFENSE

Novelis reserves the right to assert additional defenses during the course of this action.

THIRTEENTH DEFENSE

Novelis asserts that the Complaint is not substantially justified and seeks the recovery of all allowable fees and expenses pursuant to Board Rules and Regulations and all other applicable laws.

WHEREFORE, Novelis respectfully requests that upon final disposition of this Complaint, the Administrative Law Judge and the National Labor Relations Board find that Novelis did not violate the National Labor Relations Act in any of the ways alleged in the Complaint, that Novelis receive an award of all allowable fees and expenses incurred in this

proceeding, and grant such other and further relief, at law or in equity, to which Novelis shows itself to be justly entitled.

Respectfully submitted this 20th day of October, 2014.

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NOVELIS CORPORATION

CERTIFICATE OF SERVICE

I certify that on this 20th day of October, 2014, I caused the foregoing to be electronically filed with the National Labor Relations Board at http://nlrb.gov and a copy of same to be served by e-mail on the following parties of record:

Administrative Law Judge Michael Rosas
NLRB Division of Judges
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michael.rosas@nlrb.gov

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/s/ Robert T. Dumbacher

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION

Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

Petitioner

Cases 03-CA-121293
03-CA-121579
03-CA-122766
03-CA-123346
03-CA-123526
03-CA-127024
03-CA-126738

NOVELIS CORPORATION

Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

Petitioner

Cases 03-RC-120447

MOTION TO INTERVENE

Pursuant to Sections 102.29 and 102.65(b) of the National Labor Relations Board's ("NLRB" or the "Board") Rules and Regulations, John Tesoriero, Michael Malone, Richard Farrands and Andrew Duschen (collectively "Proposed Intervenors"), employees of Novelis Corporation ("Novelis"), hereby move to intervene in this proceeding, on behalf of themselves and other similarly situated employees, to oppose

I Exh. I-2

the Regional Director's Complaint and the extraordinary remedy that it seeks – the issuance of a bargaining order.

As will be established below, the Proposed Intervenors meet the relevant NLRB standards for intervention and should be permitted to intervene in this proceeding because they have a direct and substantial interest in the outcome of this case. Specifically, they have a statutory right under Section 7 of the National Labor Relations Act ("NLRA") to refrain from union representation. They also have a substantial property interest at stake here. There is a considerable risk that these rights will be impaired if they are not permitted to intervene because the Regional Director is seeking an order that will impose union representation upon the Proposed Intervenors (as well as a majority of other employees in the bargaining unit) against their express wishes. As the attached Declarations of Proposed Intervenors Richard Farrands and Michael Malone demonstrate, the Proposed Intervenors have relevant evidence concerning the valid exercise of their Section 7 rights against representation by the Petitioner, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("Union").[1] No existing party, including Novelis, can adequately present this evidence and represent the Proposed Intervenors' interest.

The Proposed Intervenors believe that if this Motion to Intervene is granted and they are allowed to be heard, the NLRB will uphold the results of the secret ballot election conducted in February 2014, during which the employees exercised their free choice and voted against union representation, or, alternatively, if necessary, conduct a

[1] Proposed Intervenor Michael Malone's Declaration is referred to as "Malone Decl." and Proposed Intervenor Richard Farrands' Declaration is referred to as "Farrands' Decl."

second election. Counsel for Proposed Intervenors is prepared to participate without delay in the existing trail schedule for this matter.

I. FACTUAL AND PROCEDURAL BACKGROUND

In December 2013, the Union began an organizing drive at Novelis' Oswego, New York facility which involved approximately 599 production and maintenance employees. The Union filed a representation petition with the Board in January 2014 seeking to represent these employees. Accordingly, the Board conducted a secret ballot election on February 20 and February 21, 2014. During the election, a majority of employees voted against Union representation. The Union filed numerous objections and the Regional Director issued a Complaint in the present proceedings. In this Complaint, the Regional Director contends that Novelis committed numerous unfair labor practices and requests the implementation of a bargaining order. *See* Second Consolidated Complaint pp. 9-10. A hearing before Administrative Law Judge Michael Rosas of the NLRB has been scheduled for July 16, 2014. *Id.* at p. 13. The Proposed Intervenors now move to intervene in this proceeding so that they can participate in the hearing and be afforded all of the rights and privileges of a full party.

II. LEGAL ARGUMENT

The NLRB's Rules and Regulations provide for an individualized, case-by-case approach to intervention motions based upon the intervenor's interest in the proceedings. Specifically, Section 102.29 of the NLRB Rules and Regulations, which applies in unfair labor practice procedures, provides that:

> ***Any person*** desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating

> the grounds upon which such ***person claims an interest*** ... The Regional Director or the administrative law judge, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper.

(Emphasis added). Likewise, Section 102.65(b) of the NLRB Rules and Regulations, which applies when determining questions concerning representation, provides that:

> ***Any person*** desiring to intervene in any proceeding shall make a motion for intervention, stating the grounds upon which such ***person claims to have an interest in the proceeding***. The Regional Director or the hearing officer, as the case may be, may by order permit intervention in person or by counsel or other representative to such extent and upon such terms as he may deem proper, and such intervenor shall thereupon become a party to the proceeding.

(Emphasis added). Either standard is met when a person merely "has an interest in the proceeding." *See* Rule 102.29 and 102.65(b).[2]

A. The Proposed Intervenors Have a Substantial Interest in This Proceeding

The Proposed Intervenors should be permitted to intervene because they not only have an interest in this proceeding, they have an interest at least as great as, if not greater than, any party's – their statutory right as employees to refrain from union representation under Section 7 of the NLRA and to exercise that right through the NLRA election process. *See* 29 U.S.C. §§ 157, 159. The right of employees, such as the Proposed Intervenors, to choose or reject union representation, is the paramount interest protected by the Act. *Rollins Transp. Sys.*, 296 NLRB 793, 794 (1989) (discussing how "employees Section 7 rights to decide whether and by whom to be

[2] This proceeding is also governed by the Administrative Procedures Act ("APA"). Section 554(c) of the APA states that "[t]he agency shall give all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit ..." 5 U.S.C. § 554(c)(1). Under Section 554, persons with "a concrete interest *however small* in the proceeding have a right to intervene." *American Trucking Assoc., Inc. v. United States*, 627 F.2d 1313, 1320 (D.C. Cir. 1980) (emphasis added).

represented" is the overriding interest under the Act). Accordingly, any interests possessed by Novelis or the Union are merely secondary to that of the Proposed Intervenors. *See Levitz Furniture Co.*, 333 NLRB 717, 728 (2001) ("it is the *employees'* Section 7 right to choose their bargaining representatives"; employer's only statutory interest in representational matters is to ensure they do not violate employee rights) (emphasis in original); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) ("[b]y its plain terms ... the NLRA confers rights only on *employees*, not on unions or their nonemployee organizers) (emphasis in original).

Proposed Intervenors also have a substantial property interest at stake in this case because the General Counsel is seeking to impose the Union upon Proposed Intervenors and their colleagues as the exclusive bargaining representative, to bargain over their wages, benefits and other terms and conditions of employment. This pecuniary interest is also sufficient to merit intervention.

Since the Proposed Intervenors have one of the most substantial interests in this proceeding, and because they (and the other employees they represent) will be directly impacted by a bargaining order, the Proposed Intervenors must be permitted to intervene to protect their Section 7 rights and to produce evidence to defend the results of the election held in February.

The Board has permitted employees to intervene in similar unfair labor practice and post-election representation proceedings on a number of occasions. *See e.g., Taylor Bros., Inc.*, 230 NLRB 861, 861 n.1, 862 (1977) (employees permitted to intervene in unfair labor practice proceedings against their employer to protect their interest in any remedy that may be issued regarding the bargaining status of the Union);

Sagamore Shirt Co., 153 NLRB 309, 309 n.1, 311 (1965) (allowing employees to intervene in unfair labor practice proceedings to establish that they constituted a majority, that they did not want to be represented by the Union, and that the Union induced their signatures with threats and coercion); *Belmont Radio*, 83 NLRB 45, 46 n.3 (allowing employees to intervene and file exceptions regarding the disposition of their challenged ballots); *Gary Steel Products Corp.*, 144 NLRB 1160, 1160 n.1, 1162 (1963) (employee permitted to intervene on behalf of himself and 62 other employees regarding union representative's misrepresentations to employees during an organizing campaign); *J.P. Stevens & Co., Inc.*, 179 NLRB 254, 254 n.1, 255 (1969) (approximately 113 employees permitted to intervene so that they could be represented during the course of the hearing on all issues related to the question of whether the Union had a majority in the appropriate unit).

These decisions demonstrate that the Board has recognized the value in allowing employees to intervene in a variety of settings to protect their interests. This case is no different. In fact, the grounds for intervention in this case are as strong, or stronger than the decisions cited. Much like the employees in *Sagamore Shirt Co.*, the Proposed Intervenors here have presented significant evidence questioning the validity of the Union's asserted majority status, which is the linchpin in the General Counsel's argument for a bargaining order.

As explained above, the outcome of this litigation will significantly impair the Proposed Intervenors' statutory and property interests. The Supreme Court has held that "[t]here could be no clearer abridgment of § 7 of the Act, assuring employees the right to bargain collectively through representatives of their own choosing or to refrain

from such activity," than "grant[ing] exclusive bargaining status to an agency selected by a minority of its employees, thereby impressing that agent upon the nonconsenting majority." *International Ladies' Garment Workers' Union v. NLRB*, 366 U.S. 731, 737 (1961) (internal quotations omitted). Furthermore, the injuries caused to the Proposed Intervenors by a bargaining order could potentially persist for years. In fact, the imposition of a bargaining order could prevent the Proposed Intervenors from choosing any other union as their representative if they so desired. For example, if the bargaining order were issued and Novelis and the Union negotiated a collective bargaining agreement, the Board's contract bar rule would preclude a representation election for up to three years. *See General Cable Corp.*, 139 NLRB 1123 (1962). As the Declarations make clear, this is not necessarily a case of rejecting the idea of unionization, it is instead a rejection of this particular Union at this particular time, as established by the February election. (*See* Malone Decl., ¶ 8).

In these circumstances, Proposed Intervenors have demonstrated a strong interest in the proceeding.

B. The Proposed Intervenors' Interests Are Not Adequately Represented By Any Existing Party

This Motion to Intervene must also be granted because the Proposed Intervenors' interests are not adequately represented by the Union or Novelis. The purpose of the NLRA is to protect employees from unfair labor practices committed by "employers" and "labor organizations." *See* 29 U.S.C. § 158(a) and (b). Therefore, to deny the Proposed Intervenors' Motion to Intervene on the grounds that their interests

are represented by either Novelis or the Union would turn the remedial purposes of the NLRA on its head.

There can be no doubt that the Proposed Intervenors' interests cannot be adequately represented by the Union because the Union's objective is to force the Proposed Intervenors and their similarly situated co-workers into a Union which they do not want and voted against. This position is clearly against the Proposed Intervenors' interests.

The Proposed Intervenors are also not adequately represented by Novelis. First, as noted above, only employees have Section 7 rights and only employees can fully represent those rights and interests. *See Rollins Transp. Sys.*, 296 NLRB at 794; *Levitz Furniture Co.*, 333 NLRB at 728; *Lechmere, Inc. v. NLRB*, 502 U.S. at 532.

Second, while there may be skepticism about claims made by an employer regarding the wishes of its employees, *see, e.g.*, *Auciello Iron Works v. NLRB*, 517 U.S. 781, 790 (1996), no such skepticism can exist when an employees are allowed to speak for themselves. The Proposed Intervenors and other similarly situated Novelis employees wish to be heard regarding all aspects of this case and the impact the proposed remedy will have on them. To that end, the Proposed Intervenors circulated a Petition among their co-workers regarding their opposition to the Union and the unreliability of the authorization cards as a basis for showing majority status. *See* Farrands' Decl. ¶ 9 at Ex. A. This petition, signed by 200 employees confirms that the election was conducted in a fair and impartial manner and that the employees were in no way coerced, threatened or intimidated by any conduct, action or statement made by any Novelis official. *Id.* The petition also reiterates that these employees oppose the

Union, object to its tactics, and do not wish to be represented by the Union for any purpose.[3] *Id.* Accordingly, allowing the Proposed Intervenors to be heard will ensure that the Board will have no doubt where these employees stand on the question of the validity of their votes against Union representation, and the unreliability of the alleged Union card majority.

Third, the idea that Novelis would adequately protect the Proposed Intervenors' rights contradicts the fundamental premise upon which the NLRA is based. "The Act was premised on the view that there is a fundamental conflict between the interests of the employers and employees engaged in collective bargaining . . . ." *Brown University*, 342 NLRB 483, 487-88 (2004); *see also Boston Medical Ctr. Corp.*, 330 NLRB 152, 178 (1999). As the Supreme Court observed in *General Bldg. Contractors Assn. v. Pennsylvania*, "[t]he entire process of collective bargaining is structured and regulated on the assumption that the parties ... proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest." 458 U.S. 375, 394 (1982). The entire framework for collective bargaining "is largely predicated upon conflicting interests of the employer to minimize costs and the employees to maximize wages, and is thus economic in nature." *Boston Medical*, 330 NLRB at 178, quoting *St. Clare's Hospital & Health Ctr.*, 229 NLRB 1000, 1002 (1977). With these realities in mind, both the Board and federal courts have resoundingly rejected the notion of an employer serving as the "vindicator of its employees' organizational freedom." *Corrections Corp. of Am.*, 347 NLRB 632, 655 n.3 (2006), *citing Auciello*, 517 U.S. at 792. By definition,

[3] The Proposed Intervenors also circulated a petition among employees hired by Novelis since the secret ballot election in February asking for their input on union representation. *See* Farrands' Decl. ¶ 10 at Ex. B. This petition was signed by 6 employees. *Id.*

"the employer has its self-interest to watch over and those interests are not necessarily aligned with those of its employees." *Auciello*, 517 U.S. at 790.

The facts of this case do not warrant an exception. Indeed, the Union and the General Counsel contend that Novelis violated the Section 7 rights of its employees by engaging in a variety of unlawful acts. It is illogical to conclude that Novelis can serve as both the violator and the protector of its employees' interests.

To the extent that Proposed Intervenors' interests conceptually overlap with those of Novelis (*i.e.*, in opposition to recognition of the Union and a bargaining order), the defense of those interests will necessarily be undertaken from the unique perspective of each party. Although Novelis may ultimately desire the same result with respect to this Union, it may not have Proposed Intervenors' best interests in mind nor adequately protect them. For example, Novelis' business or financial interests could lead it to settle the unfair labor practice charges and accept a bargaining order to save itself the cost and disruption of further litigation, despite clear proof of the employees' opposition to union representation. Put simply, Novelis has business interests to defend, while Proposed Intervenors and their co-workers have statutory rights to vindicate and personal, pecuniary interests to protect. Without intervention and full party status, the Proposed Intervenors would be powerless to contest any settlement and agreement to recognize the Union. Such a result would disfranchise the Proposed Intervenors and lock them into an unwanted minority union for years. It would also prevent them from choosing a different union as their representative if they so desired. Accordingly, Novelis cannot adequately represent their interests.

III. CONCLUSION

As detailed above, the Proposed Intervenors and their like-minded co-workers have statutory and pecuniary interests to vindicate. Given that no party to this proceeding will adequately represent these interests, they must be permitted to intervene in this proceeding to protect their right to choose whether they wish to be represented by the Union for purposes of collective bargaining. Accordingly, it is respectfully requested that the Proposed Intervenors' Motion to Intervene be granted and that they be permitted to intervene under Sections 102.29 and/or 102.65(b) of the NLRB's Rules and Regulations.

Respectfully submitted,

DATED: Syracuse, New York
July 11, 2014

BOND, SCHOENECK & KING, PLLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RHONDA P. LEY, Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

NOVELIS CORPORATION,

Respondent.

Civil Action No. 5:14-cv-775 (GLS/DEP)

DECLARATION IN SUPPORT OF MOTION TO INTERVENE

Richard E. Farrands, under penalty of perjury, states the following:

1. I am currently employed in the position of Maintenance Planner at the Novelis Corporation ("Novelis") manufacturing facility in Oswego, New York. I have been employed in that position with Novelis, and its predecessors, since 1991. I currently reside in Fulton, New York.

2 I make this Declaration in support of a motion on behalf of Richard Farrands, John Tesoriero, Michael Malone and Andy Duschen to intervene in legal proceedings commenced by and before the National Labor Relations Board ("NLRB").

3. During the course of my employment, sometime in December 2013, I became aware of union organizing activity by the United Steelworkers Union at the Novelis facility. I took a keen interest in the organizing activity because I believed, and still believe, that the result of that activity would have a significant impact on my future employment and that of my co-workers at the Oswego facility.

4. During the union organizing campaign, I read the Steelworkers Union written campaign materials, and listened to my fellow employees discuss relevant issues and arguments raised by the Steelworkers Union. I also read the Company's

campaign materials and attended meetings during which the Company addressed union organizing issues and provided information.

5. I was not persuaded by the Steelworkers conduct, actions, or statements to vote for union representation. I was not coerced, threatened or intimidated by any conduct, action, or statement made by any Novelis representative. Novelis representatives presented the employees with facts and encouraged us to vote in the election; I found nothing coercive, threatening or intimidating about this.

6. The Steelworkers Union and its representatives are known in the Oswego community, based on their representation of employees at other companies. Some of these employees now work at Novelis and discussed their experiences with the Steelworkers.

7. I was eligible to vote in the NLRB election conducted on February 20 and 21, 2014. I did vote in the election in accordance with my conscience after considering all of the information. My vote was voluntary and free from coercion.

8. I am concerned that my voice be heard and my legal interests be fully represented in the NLRB and court proceedings. I do not wish to be represented by the Steelworkers union for any purpose. The Steelworkers Union was not the right union to represent us at Novelis. I had a fair opportunity to vote in the secret ballot election. I want the results of the election to be honored. I oppose the NLRB's efforts to force Novelis to recognize the Steelworkers Union as the exclusive bargaining representative for me and my fellow employees. I believe it is in the best interests for the NLRB proceedings to be stopped now.

9. Because of my concern for my future, and the future of the entire workforce at the Oswego facility, I, along with co-workers John Tesoriero, Michael Malone and Andy Duschen, circulated a petition among our co-workers who were eligible to vote in the February 2014 NLRB election conducted at the Oswego facility asking that the NLRB honor the results of the election and further indicating that we did not feel coerced, threatened or intimidated by actions taken by Company officials. Attached to this Declaration as **Exhibit A** is the petition of approximately 200 signatures of eligible voters collected as a result of that effort.

10. In addition, a number of employees have been hired since the secret ballot NLRB election conducted on February 20 and 21, 2014. I, along with Tesoriero, Malone and Duschen, circulated a petition among those workers asking for their input on the representation by the Union. That petition in opposition to Union representation, signed by six employees, is attached as **Exhibit B**.

11. During the course of circulating the petitions, a number of employees indicated to me that they were grateful that we were circulating the petitions and they wanted to sign the petitions but were afraid to do so due to fear of retaliation from the Union. I estimate that 12 employees personally told me they would have signed the petition but for the fear of retaliation by the Union if the Union was ultimately successful in organizing the Novelis workforce.

12. I have been told by some Novelis employees that they were told by individuals circulating union authorization cards on behalf of the Steelworkers Union that they could not attend Union informational meetings or receive information unless they signed union authorization cards.

13. I have been told by some Novelis employees who signed union authorization cards that they had second thoughts and asked to have their cards returned to them and their requests were denied.

14. I would like the opportunity to intervene and present evidence and testimony regarding any relevant facts in the pending NLRB legal proceedings. I believe that I, along with my co-workers, have a unique perspective to add that is not adequately represented by the Company, the Union, or the NLRB in these proceedings.

15. I make the foregoing statements under penalty of perjury.

RICHARD E. FARRANDS

Sworn to before me this 10th day of July, 2014.

Notary Public

SUNNY I. TICE
Notary Public, State of New York
No. 02TI6257326
Qualified In Oswego County
Commission Expires March 12, 2016

2345728.2

Exhibit A

PETITION

Petition Summary and Background	On February 20 and 21, 2014, the National Labor Relations Board (NLRB) conducted a secret ballot election among the production and maintenance employees at the Novelis manufacturing facility in Oswego, NY. A majority of employees voted against representation by the United Steelworkers Union. The NLRB is attempting to overturn the results of the election through an administrative proceeding and a federal court lawsuit against Novelis. Several employees (Richard Farrands, John Tesoriero, Michael Malone, and Andy Duschen) have hired a law firm to represent the interests of the employees – not the Company's interests and not the Steelworkers Union's interests – in those legal proceedings. This petition is in support of those employees' efforts to end those legal proceedings and allow the results of the election to stand as the decision of the employees.
Actions Petitioned for:	I, the undersigned, am a concerned Novelis hourly employee who was eligible to vote in the NLRB election in February 2014 and I state: • I am concerned that my voice be heard and my legal interests be fully represented in the NLRB and court proceedings. • I do not wish to be represented by the Steelworkers Union for any purpose. • I had a fair opportunity to vote in the secret ballot election. • I want the results of the election to be honored. • I oppose the NLRB's effort to force Novelis to recognize the Steelworkers Union as the exclusive bargaining representative for me and my fellow employees. • I was not coerced, threatened or intimidated by any conduct, action or statement made by any Novelis official. • I was not persuaded by the Steelworkers' conduct actions or statements to vote for union representation. • I believe that it is in my best interest for the NLRB proceedings to be stopped now.

Printed Name	Signature	Address	Date
RICHARD E. FARRANDS		462 W 2ND St. FULTON, NY 13069	7-3-14
Michael W Malone	Michael W Malone	262 HALL ROAD Hannibal NY 13074	7-3-14
Andrew P. Duschen		959 Co Rt 29 Oswego NY 13126	7-3-14
John N. Tesoriero		201 Maiden Lane Rd. Oswego	7-3-14
JEFFREY F. BAKER		246 ROCHESTER ST. HANNIBAL, NY 13074	7-3-14
MICHAEL W SOMERS		386 County Rte. 7 Hannibal NY	7/3/14
MARK THURMAN		63 GARDEN ST OSWEGO NY 13126	7/3/14
Gary L Weber		92 Post Lewis Rd Mexico NY 13114	7/3/14
GREGORY D. RHODES		1163 Co Rte 8 Fulton NY 13069	7/3/14
Robert J Nevills		1459 Co Rt 46 Lacona NY 13083	7/5/14.
Worden Somers Jr.		14035 Wilde Rd., Martville, NY 13111	7/3/14
ERIC KOSBOB		4178 County Rte 4, Oswego NY	7/3/14
BRIAN ANDERSON		129 nine mile Pt Rd Oswego NY	7/3/14
[illegible]		6347 Mud Mill Rd Brewerton NY	7/3/14

PETITION

Petition Summary and Background	On February 20 and 21, 2014, the National Labor Relations Board (NLRB) conducted a secret ballot election among the production and maintenance employees at the Novelis manufacturing facility in Oswego, NY. A majority of employees voted against representation by the United Steelworkers Union. The NLRB is attempting to overturn the results of the election through an administrative proceeding and a federal court lawsuit against Novelis. Several employees (Richard Farrands, John Tesoriero, Michael Malone, and Andy Duschen) have hired a law firm to represent the interests of the employees – not the Company's interests and not the Steelworkers Union's interests – in those legal proceedings. This petition is in support of those employees' efforts to end those legal proceedings and allow the results of the election to stand as the decision of the employees.
Actions Petitioned for:	I, the undersigned, am a concerned Novelis hourly employee who was eligible to vote in the NLRB election in February 2014 and I state: • I am concerned that my voice be heard and my legal interests be fully represented in the NLRB and court proceedings. • I do not wish to be represented by the Steelworkers Union for any purpose. • I had a fair opportunity to vote in the secret ballot election. • I want the results of the election to be honored. • I oppose the NLRB's effort to force Novelis to recognize the Steelworkers Union as the exclusive bargaining representative for me and my fellow employees. • I was not coerced, threatened or intimidated by any conduct, action or statement made by any Novelis official. • I was not persuaded by the Steelworkers' conduct actions, or statements to vote for union representation. • I believe that it is in my best interest for the NLRB proceedings to be stopped now.

Printed Name	Signature	Address	Date
Robert Sweeting	Robert E Sweeting	PO Box 146 Sterling NY 13156	7-3-14
MICHAEL JORDAN	Michael Jordan	402 MAIDER ROAD CLAY, NY 13041	7-3-14
Wayne Weber		85 Ft. Leazier Rd Mexico NY 13114	7-3-14
Scott Allen	Scott Allen	14809 Rt 370 Red Creek NY 13143	7-3-14
Shane Hughes	Shane Hughes	508 Ph. II. PS St. Fulton NY 13069	7-3-14
Derec Smith		798 Oceanar Rd OSWEGO NY 13126	7-3-14
Eric Thomas		205 Dunlap Road Mexico NY 13114	7-3-14
Roger Allen		533 Reef Bal RD Hannibal NY 13074	7-3-14
Robert Reed		135 w 4th st Oswego NY 13126	7-3-14
Mick Jadus	Michael M Jadus	22 Magnolia Rd, Oswego NY 13126	7-3-14
Rick Doherty		184 E 7th ST OswegoNY	7/3/14
Brad Ewig		31 Butternut Dr. Oswego, NY 13126	7/3/14
DAVE PENBERO		12 MEANEY CERCLE OSWEGO, 13126	7/3/14
John Burgess	John Burgess	214 East 5th St OSWEGO, NY 13126	7/3/14

PETITION

Petition Summary and Background	On February 20 and 21, 2014, the National Labor Relations Board (NLRB) conducted a secret ballot election among the production and maintenance employees at the Novelis manufacturing facility in Oswego, NY. A majority of employees voted against representation by the United Steelworkers Union. The NLRB is attempting to overturn the results of the election through an administrative proceeding and a federal court lawsuit against Novelis. Several employees (Richard Farrands, John Tesoriero, Michael Malone, and Andy Duschen) have hired a law firm to represent the interests of the employees – not the Company's interests and not the Steelworkers Union's interests – in those legal proceedings. This petition is in support of those employees' efforts to end those legal proceedings and allow the results of the election to stand as the decision of the employees.
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Printed Name	Signature	Address	Date
Adam Perry		77 West 3rd St Oswego	7/3/14
Alan J. Hendley		12 Mansion RD Mexico, NY 13114	7/3/14
ANDREW FLYNN		179 E 7TH ST APT 1 OSWEGO, NY 13126	7/3/14
GARY GRANGER		33 MASON RD, MEXICO NY, 13114	7/3/2014
David J. Guichard		513 Kellogg St. Fulton NY. 13069	7-3-2014
PAUL D. HANSON		8355 New Country Cicero, NY 13039	7-3-2014
CRAIG HAINES		222 Klocks Corners Rd 13126	7-3-2014
Chris Emrich		7 Dominic St Oswego, NY 13126	7/3/14
DAVID DUSCHEN		1227 CO. RT. OSWEGO NY 13126	7-3-14
Alex R Wells		364 SW 8th St. Oswego NY 13126	7-4-14
Calvin Shumway		County Route 4 Central Sq 13036	7-4-14
Jonathon Laux		214 Baum Rd Hasting NY. 13076	7-4-14
Joe Gaulak III		54 Hickory Grove Rd Fulton NY	7/4/14
Michael Brassard		853 County Rt 6 Fulton NY	7/4/14

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Printed Name	Signature	Address	Date
Greg Gibson		290 Creamery Rd, Oswego NY 13126	7/4/14
Lynn Shortsleef		1722 old State Road Sterling NY 13156	7/4/14
William Considine		2734 Lamson Rd, Phoenix NY 13135	7/4/14
Todd Scruton		12639 Upton Road Red Creek NY. 13143	7-4-14
Ken Nassoiy		492 Hannibal Rd Pulaski NY	7-4-14
Mike Swafford		[illegible]	7-4-14
DEAN S HARPER, JR		3556 CO RT 6, OSWEGO NY 13126	7-4-14
Daniel Petersen		141 KENDALL DR WEST EAST SYRACUSE 13057	7-4-14
Robert Ray		3617 County Rt 57 Oswego NY	7/4/14
Brett Somers		3647 CO RT 57 Oswego NY	7-4-14
Antonio Vazquez		205 Middle Rd Oswego NY	7/4/14
Kevin Halliday		261 West 4TH ST Oswego NY	7-4-14
Brian Pritchard		1722 Laxton Rd Sterling NY 13156	7-4-14
William Manchester		1673 Whirlwind RD Greenville TN. 37743	7-4-14

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Printed Name	Signature	Address	Date
Robert Wise	Robert Wise	158 E. 2nd St. Oswego, NY 13126	7-4-14
Tracy Squire	Tracy Squire	3253 Co Rt 4 Fulton NY 13069	7-4-14
JESSE HILLIER	Jesse E Hillier	239 E. 10th ST OSWEGO NY	7-4-14
Louis LaClair	Louis LaClair	2534 Middle Rd Cato NY 13206	7/7/14
David Kuhl	David Kuhl	72 Mitchell Dr Oswego NY	7-6-14
James F Sperino Jr	James F Sperino Jr	115 BCE RT 3a Oswego NY	7-6-14
Charlene Grey	Charlene Grey	23 Kiwi Trl Mexico NY 13114	7/7/14
TODD Wehling	Todd Wehling	14086 W. Ide Rd Mattville NY 13111	7/7/14
Roger Beginski	Roger Beginski	435 Blythe rd Hannibal, NY 13074	7/7/14
William A Barton	William A Barton	219 Gulfcrest Ct Baldwinsville NY 13027	7-7-14
Thomas J wells	Thomas J Wells	ECC Co Rt 25 Oswego, NY 13126	7-7-14
Timothy Southworth	Timothy Southworth	141 Ridge RD Fulton NY 13069	7-7-14
Rodney Buskey	Rodney Buskey	796 County Route 3 Oswego NY 13126	7-7-14
Frank R Williams	Frank R Williams	54 Rathbun Rd. Fulton NY 13069	7-7-14

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Printed Name	Signature	Address	Date
GEORGE AXTELL		712 Pear Red Rd Hannibal, NY 13074	7/3/14
Scott Baum		3613 ST RT 3 Fulton, NY 13069	7/3/14
Melvin Hansen		69 Crooked Hollow RD Fulton	7/3/14
Shawn Clary		289 Furnace Station Rd Oswego	7/3/14
Brian Thomas		50 Gordon PRKW Apt 45 Syracuse	7/4/14
Mark Caltabiano		595 County Route 6 Phoenix NY 13135	7/4/14
Anthony M Caltabiano		9 Helback Rd Phoenix NY 13135	7/4/14
David RAYMOND		204 Merrell Rd Fulton NY 13069	7/4/14
DARREL HUNTER		3923 Co Rt 4 Oswego NY 13126	7/4/14
Chris Driscoll		23-31 Liberty Ct Oswego NY 13126	7/4/14
Andrew MacArthur		497 Maiden Lane Red Creek, NY 13143	7/4/14
Tyler Harriman		434 Hewitt Rd Oswego NY 13126	7/4/14
Cory Jones		1814 Parkhurst Rd Sterling, NY 13156	7/4/14
Robert Corey		185 Brands Rd Hannibal NY 13074	7/4/14

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Printed Name	Signature	Address	Date
Timothy C. Mansfield	Timothy C Mansfield	2072 Co. Rt. 6 Fulton, N.Y. 13069	7/3/14
Alan Wilcox		124 Lakeshore Rd Fulton	7-3-14
Scott Somers		7 Co. Rt. 42 OSWEGO	7/3/14
Robert Noyes		1016 Mitchell Rd Oswego	7/3/14
Don Upcraft		551 66 rd Hannibal NY.	7/3/14
Andrew Schneider		319 State Route 104A Hannibal NY	7/3/14
GARRY M. BURTON	Garry M. Burton	4855 ST. RT. 104 OSWEGO, N.Y.	7/3/14
LOUIS R. CASTALDO		317 W 1ST STREET OSWEGO NY	7/3/14
Jeffrey Mosier		5765 St Rt 104 Mexico NY	7/3/14
Tim Foster	Tim Foster	317 W 1st APT 402 OSW, N.Y.	7/3/14
Mark Laymond		39 State Rt 3 Fulton NY 13069	7/3/14
Michael Dello		21 Hollister Rd Mexico NY 13114	7/3/14
Charles R Yablonski	Charles Yablonski	4 Charles Dr Oswego NY 13126	7/3/14
John R. Whitcomb	John R. Whitcomb	311 Blythe Rd. Hannibal, N.Y. 13074	7-3-14

PETITION

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Printed Name	Signature	Address	Date
EVERETT TAYLOR		95 AMES ST MEXICO NY 13114	7/3/14
Michael Luzzaro		209 E. 9th St, Oswego NY 13126	7/3/14
Clayton J. Rix		213 Lilly Marsh Rd. Mexico N.Y. 13114	7/3/14
Timothy J HOGAN		263 O'Connor Rd Oswego N.Y. 13126	7/3/14
Brian Vanella		3848 County route 4 Oswego NY 13126	7/8/14
Mike Stiles		32 Skyline Dr.	7/8/14
Johnathan Kemp		N/A	7/8/14
Kathy Pritchard		24 Birch Ln Apt 4F	07/22/14
David Doyle		286 Duer St	7-8-14
Charles Wadsworth		63 Harvest Dr.	7-9-14 cw
Anthony Gioffreda		11577 Rte 176 Cato NY 13033	7/9/14
[redacted]			
Kevin Shoetsket		1392 Old state Rd sterling NY	7-9-14
Scott Sweet		1485 Co Rte 57 Fulton N Y	07-09-14

NEW EMP. SHEET

PETITION

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Printed Name	Signature	Address	Date
BURT J KNIGHT JR	Burt J Knight	35 NEW PT. CNEEC NY 13126	7-3-14
Don Tousley	Don Tousley	20 North Pollard Dr. 13069	7-3-14
Robert Dudley		8528 Bayridge RD Cicero/13039	7-3-14
MICHAEL NIVER		107 B LEITCH ST FULTON NY 13069	7-3 14
Brian VanHaltz		340 Colt 6 Mexico, NY 13114	7-3-14
DON WEST	DOEST	7 W 5TH St Oswego NY 13126	7/3/14
Steven Woods		67 Tallman St. Apt 1 Oswego, NY 13126	7/3/14
Mark A. Fraggle	Mark A Fraggle	73 Bartsell Drive Oswego	7/3/14
Roberto Ascenzi		206 E 6th St Oswego NY 13126	7/3/14
Mathew LaRue		1892 County Rt 45 Fulton NY 13069	7/3/14
Joel Stavitis		1386 State Rt 176 Fulton NY 13069	7/3/14
Michael Herrald		109 March Rd. Oswego, NY 13126	7/3/14
Jerry Pritchard	Jerry Pritchard	304 Barker Rd. Oswego, N.Y. 13126	7/3/14
Edward Knight	Edward Knight	72 3rd Ave. Oswego NY 13126	7/3/14

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Printed Name	Signature	Address	Date
Brian E. Randall	Brian E. Randall	1576 St Rt 104 Mexico NY 13114	7/3/14
Anthony D. Farella	Anthony D. Farella	20 Kennedy Ave Oswego NY 13126	7/3/14
Derrick E. Hagar	Derrick E Hagar	4705 St Rt 3 Central Square NY 13036	7/3/14
Bernard Rose	Bernard Rose	3273 East St Oswego NY 13126	
Stephen Lamb	Stephen Lamb	701 Lincoln Ave Fulton	7-5-14
Mark Lewis	Mark Lewis	271 State Route 104 Oswego	7-3-14
JACOB M. GREY	Jacob M. Grey	118 Miner Rd. Oswego	7-3-14
Derek Francisco	Derek Francisco	82 Woodview Dr Parish NY	7/3/14
STEPHEN DUSCHEN	Stephen Duschen	454 Middle Rd Oswego NY	7-3-14
Matt Frey	Matthew Frey	94 E 11th St Oswego NY	7/3/14
Chris Jarki	Chris Jarki	2647 County Route 7 Oswego NY 13126	7/3/14
Mike MacManus	Michael MacManus	1023 Middle Rd Oswego NY	7/3/14
Richard Cummings	Richard Cummings	1079 County Route 1 Mexico NY	7/3/14
Tim Bulger	Tim Bulger	198 E. Albany St Apt 9C Oswego	7/3/14

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inted Name	Signature	Address	Date
PHILIP PALMER		5085 County Route 97 ADAMS NY	7-3-14
[illegible] Haynes		3243 [illegible]	7-3-14
Richard Browning		990 Co Rt. 6 Fulton, NY	7-3-14
Mike Shellon		14b County Rt 63	7-3-14
Matthew Bucher		4 Sunrise Dr.	7-4-14
[illegible]		[illegible]	7-4-14
Daniel A. Franco		520 Shore Oaks Drive Osw	7/4/14
David Pope		1052 Co. Rt. 29 Oswego	7-4-14
Rick Wallace		199 Wilson Rd Oswego	7-4-14
Paul Lowe		22 McCracken Drive Osw	7-4-14
George Benton		147 W. FIFTH ST. Rd. Oswego NY	7-4-14
James Lillis		6560 Myers Lane Cicero NY	7-4-14
Matt Tedford		8177 Schutzman Rd Blossvale NY	7-4-14
Gerard Knight		9159 Maple Rd Clay N.Y.	7-14-14

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Printed Name	Signature	Address	Date
Richard M. Wallace	Richard M. Wallace	689 Dutch Ridge Rd	7-4-14
Dean A. White	Dean A. White	46 Harbor Brook Dr. Oswego NY	7-4-14
Brian Fornier	Brian Fornier	40 Romney DR Baldwinsville	7-4
Guillermo Quintana	Guillermo Quintana	Co Rt 12 433 Bayistown NY	7-8-14
Fred Zych	Fred Zych	110 E 3rd St Oswego NY	7/7/14
Richard J. Lagoe II	Richard J. Lagoe II	395 O'Connor Road	7/7/14
David VanFleet	David VanFleet	P.O. Box 461 Fair Haven, NY	7/7/14
Robert Castiglia	Robert Castiglia	917 Co Rt 25 Oswego NY	7/7/14
David Domecko	David Domecko	122 W Mipers Rd Oswego	7/9/14
Mark Shirley	Mark Shirley	8217 Ford Rd Red Creek NY	7/7/14
Jim Ashby	Jim Ashby	421 Co. Rte 6 Phoenix NY 13135	7/7/14
Jack Donovan	Jack Donovan	4230 State Rte 104 Mexico NY	7/7/14
Bill Meek	Bill Meek	PO Box 55, 3540 Co Rte 6 New Haven NY	7/7/14
ERIC HAINES	Eric Haines	36 Goodwin Drive, Oswego NY	7/7/14

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Printed Name	Signature	Address	Date
Ronald S Merz		127 E. Albany St. Oswego N.Y. 13126	7-4-14
DAVID J DEMUNE		76 [illegible] AVE OSWEGO NY 3126	7-4-14
Steven C. McGrobe		68 W. 5th st Oswego NY 13126	7-5-14
[illegible]		172 E 5th St Oswego NY 13126	7-5-14
Jared Pritchard		1557 County Rte 7 Oswego	7/5/14
Zach Carragh		148 E. Albany St. Apt 5B Oswego	7-6-14
Jason Vickery		31 Tiffi St Fulton NY 13069	7/8/14
Kristin Carter-Brito		3348 Main St Mexico	7/10/14
JERRY TAYLOR		314 NINE MILE PT. RD OSWEGO	7/11/14
Alicia Canale		138 E. 6th St Oswego NY	7/11/14
Jimmy J WALKER		7031 Co. Rt 13 ALCONA NY	7-11-14

PETITION

Petition Summary and Background	On February 20 and 21, 2014, the National Labor Relations Board (NLRB) conducted a secret ballot election among the production and maintenance employees at the Novelis manufacturing facility in Oswego, NY. A majority of employees voted against representation by the United Steelworkers Union. The NLRB is attempting to overturn the results of the election through an administrative proceeding and a federal court lawsuit against Novelis. Several employees (Richard Farrands, John Tesoriero, Michael Malone, and Andy Duschen) have hired a law firm to represent the interests of the employees – not the Company's interests and not the Steelworkers Union's interests – in those legal proceedings. This petition is in support of those employees' efforts to end those legal proceedings and allow the results of the election to stand as the decision of the employees.
Actions Petitioned for:	I, the undersigned, am a concerned Novelis hourly employee who was eligible to vote in the NLRB election in February 2014 and I state: • I am concerned that my voice be heard and my legal interests be fully represented in the NLRB and court proceedings. • I do not wish to be represented by the Steelworkers Union for any purpose. • I had a fair opportunity to vote in the secret ballot election. • I want the results of the election to be honored • I oppose the NLRB's effort to force Novelis to recognize the Steelworkers Union as the exclusive bargaining representative for me and my fellow employees. • I was not coerced, threatened or intimidated by any conduct, action or statement made by any Novelis official. • I was not persuaded by the Steelworkers' conduct actions, or statements to vote for union representation. • I believe that it is in my best interest for the NLRB proceedings to be stopped now.

Printed Name	Signature	Address	Date
Steve Kush	Steve Kush	[illegible] Oswego NY 13126	7-7-14
Sean Store	Sean Store	947 Simmons Rd Sterling NY 13156	7-7-14
Alan DeForest	Alan D. DeForest	164 West Second Street South Fulton NY.	7-7-2014
Gary P Gabrielle	Gary P. Gabrielle	43 Nestle Dr Oswego NY	7/8/14
Anthony M. McDermott	Anthony M. McDermott	14491 W. Bay rd Sterling NY	7/9/14

PETITION

Petition Summary and Background	On February 20 and 21, 2014, the National Labor Relations Board (NLRB) conducted a secret ballot election among the production and maintenance employees at the Novelis manufacturing facility in Oswego, NY. A majority of employees voted against representation by the United Steelworkers Union. The NLRB is attempting to overturn the results of the election through an administrative proceeding and a federal court lawsuit against Novelis. Several employees (Richard Farrands, John Tesoriero, Michael Malone, and Andy Duschen) have hired a law firm to represent the interests of the employees – not the Company's interests and not the Steelworkers Union's interests – in those legal proceedings. This petition is in support of those employees' efforts to end those legal proceedings and allow the results of the election to stand as the decision of the employees.
Actions Petitioned for:	I, the undersigned, am a concerned Novelis hourly employee who was eligible to vote in the NLRB election in February 2014 and I state: • I am concerned that my voice be heard and my legal interests be fully represented in the NLRB and court proceedings. • I do not wish to be represented by the Steelworkers Union for any purpose. • I had a fair opportunity to vote in the secret ballot election. • I want the results of the election to be honored. • I oppose the NLRB's effort to force Novelis to recognize the Steelworkers Union as the exclusive bargaining representative for me and my fellow employees. • I was not coerced, threatened or intimidated by any conduct, action or statement made by any Novelis official. • I was not persuaded by the Steelworkers' conduct actions, or statements to vote for union representation. • I believe that it is in my best interest for the NLRB proceedings to be stopped now.

Printed Name	Signature	Address	Date
GARY BOCKER		200 Chaseld FULTON	7-7-14
Andrew Huntington		13233 Ridge Rd Wolcott	7-7-14
KYLE KIMBALL		186 COUNTY ROUTE 6 PHOENIX	7-7-14
DUSTIN TESSY		329 Maple St. Apt 36	07/7/14
Maurice Kellison		329 Maple St Apt 24 Oswego NY 13126	07/7/14
BILL YAHNER		316 LOT 10 RD Central Square	7-7-14
Daniel Hendricks		7234 State Rt 104 OSWEGO NY	7-7-14
Scott M Bussie		416 County Rt 51 Mexico NY 13114	7/7/14
TONY ALEMANS		3556 CO RT 45 OSWEGO	7/7/14
Kevin Roark		124 W. Schuyler St	7/7/14
Randy Hayes		8 Madison Ave. Mexico NY 13114	7-7-14
JASON ROY		13 CO. Rte. 31, Oswego, NY	7/7/14
DANIEL CARTER		292 TUBBS RD MEXICO NY 13114	7/7/14
James Walcven		344 Co Rt 7, Hannibal, NY	7/9/14

PETITION

Petition Summary and Background	On February 20 and 21, 2014, the National Labor Relations Board (NLRB) conducted a secret ballot election among the production and maintenance employees at the Novelis manufacturing facility in Oswego, NY. A majority of employees voted against representation by the United Steelworkers Union. The NLRB is attempting to overturn the results of the election through an administrative proceeding and a federal court lawsuit against Novelis. Several employees (Richard Farrands, John Tesoriero, Michael Malone, and Andy Duschen) have hired a law firm to represent the interests of the employees – not the Company's interests and not the Steelworkers Union's interests – in those legal proceedings. This petition is in support of those employees' efforts to end those legal proceedings and allow the results of the election to stand as the decision of the employees.
Actions Petitioned for:	I, the undersigned, am a concerned Novelis hourly employee who was eligible to vote in the NLRB election in February 2014 and I state: • I am concerned that my voice be heard and my legal interests be fully represented in the NLRB and court proceedings. • I do not wish to be represented by the Steelworkers Union for any purpose. • I had a fair opportunity to vote in the secret ballot election. • I want the results of the election to be honored. • I oppose the NLRB's effort to force Novelis to recognize the Steelworkers Union as the exclusive bargaining representative for me and my fellow employees. • I was not coerced, threatened or intimidated by any conduct, action or statement mace by any Novelis official. • I was not persuaded by the Steelworkers' conduct actions, or statements to vote for union representation. • I believe that it is in my best interest for the NLRB proceedings to be stopped now.

Printed Name	Signature	Address	Date
Travis Hartford		17 west 12th St Oswego NY	7-9-14
Richard Bonney		14500 Rte 104 Red Creek NY	7-9-14
Mike Cahill			7-9-14

Exhibit B

Petition - New Employees

Petition summary and background	On February 20 and 21, 2014, the National Labor Relations Board (NLRB) conducted a secret ballot election among the production and maintenance employees at the Novelis manufacturing facility in Oswego, NY. A majority of employees voted against representation by the United Steelworkers Union. The NLRB is attempting to overturn the results of the election through an administrative proceeding and a federal court lawsuit against Novelis. Several employees (Richard Farrands, John Tesoriero, Michael Malone, and Andy Duschen) have hired a law firm to represent the interests of the employees – not the Company's interests and not the Steelworkers Union's interests – in those legal proceedings. This petition is in support of those employees' efforts to end those legal proceedings and allow the results of the election to stand as the decision of the employees.
Action petitioned for	I, the undersigned, am a concerned Novelis hourly employee who ***was not*** eligible to vote in the NLRB election in February 2014 and I state: • I am concerned that my voice be heard and my legal interests be fully represented in the NLRB and court proceedings. • I do not wish to be represented by the Steelworkers Union for any purpose. • I want the results of the election to be honored. • I oppose the NLRB's effort to force Novelis to recognize the Steelworkers Union as the exclusive bargaining representative for me and my fellow employees. • I was not coerced, threatened or intimidated by any conduct, action or statement made by any Novelis official. • I was not persuaded by the Steelworkers' conduct actions, or statements to vote for union representation. I believe that it is in my best interest for the NLRB proceedings to be stopped now.

Printed Name	Signature	Address	Comment	Date
Timmy Wheeler		1556 Blue Mountain Road Scriba, NY 13126		7/7/14
Colton Taylor		95 Ames St. Mexico NY 13114		7/7/14
Taylor Caswell		24 Birch Lane (3F) Oswego NY 13126		7/8/14
Desiree Allen		220 Liberty Street Oswego, NY 13126		7/8/14
Jack Keenan		24 Birch lane (3F) Oswego NY 13126		7-8-14
Jeffrey Wilson		9307 Oswego Rd Phoenix NY 13135		7-9-14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RHONDA P. LEY, Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

NOVELIS CORPORATION,

Respondent.

Civil Action No. 5:14-cv-775 (GLS/DEP)

DECLARATION IN SUPPORT OF MOTION TO INTERVENE

Michael Malone, under penalty of perjury, states the following:

1. I am currently employed as a crew leader in an hourly position at the Novelis Corporation ("Novelis") manufacturing facility in Oswego, New York. I have been employed with Novelis, and its predecessors, for 27 years. I currently reside in Hannibal, New York.

2. I make this Declaration in support of a motion on behalf of Richard Farrands, John Tesoriero, Michael Malone and Andy Duschen to intervene in legal proceedings commenced by and before the National Labor Relations Board ("NLRB").

3. During the course of my employment, sometime in December 2013, I became aware of union organizing activity by the United Steelworkers Union at the Novelis facility. I took a keen interest in the organizing activity because I believed, and still believe, that the result of that activity would have a significant impact on my future employment and that of my co-workers at the Oswego facility.

4. During the union organizing campaign, I read the Steelworkers Union written campaign materials, and listened to my fellow employees discuss relevant issues and arguments raised by the Steelworkers Union. I also read the Company's

campaign materials and attended meetings during which the Company addressed union organizing issues and provided information.

5. I was not persuaded by the Steelworkers conduct, actions, or statements to vote for union representation. I was not coerced, threatened or intimidated by any conduct, action, or statement made by any Novelis representative. Novelis representatives presented the employees with facts and encouraged us to vote in the election; I found nothing coercive, threatening or intimidating about this.

6. The Steelworkers Union and its representatives are known in the Oswego community, based on their representation of employees at other companies. Some of these employees now work at Novelis and discussed their experiences with the Steelworkers.

7. I was eligible to vote in the NLRB election conducted on February 20 and 21, 2014. I did vote in the election in accordance with my conscience after considering all of the information. My vote was voluntary and free from coercion.

8. I am concerned that my voice be heard and my legal interests be fully represented in the NLRB and court proceedings. I do not wish to be represented by the Steelworkers union for any purpose. If I thought union could help us, I would vote for one, but the Steelworkers Union was not the right union to represent us at Novelis. I had a fair opportunity to vote in the secret ballot election. I want the results of the election to be honored. I oppose the NLRB's efforts to force Novelis to recognize the Steelworkers Union as the exclusive bargaining representative for me and my fellow employees. I believe it is in the best interests for the NLRB proceedings to be stopped now.

9. Because of my concern for my future, and the future of the entire workforce at the Oswego facility, I, along with co-workers Andy Duschen, John Tesoriero and Richard Farrands, circulated a petition among our co-workers who were eligible to vote in the February 2014 NLRB election conducted at the Oswego facility asking that the NLRB honor the results of the election and further indicating that we did not feel coerced, threatened or intimidated by actions taken by Company officials. Attached as Exhibit A to the Declaration of Richard Farrands is the petition of approximately 200 signatures of eligible voters collected as a result of that effort.

10. In addition, a number of employees have been hired since the secret ballot NLRB election conducted on February 20 and 21, 2014. I, along with Tesoriero, Duschen and Farrands, circulated a petition among those workers asking for their input on the representation by the Union. That petition in opposition to Union representation, signed by six employees, is attached as Exhibit B to Farrands' Declaration.

11. During the course of circulating the petitions, a number of employees indicated to me that they were grateful that we were circulating the petitions and they wanted to sign the petitions but were afraid to do so due to fear of retaliation from the Union.

12. I have been told by some Novelis employees that they were told by individuals circulating union authorization cards on behalf of the Steelworkers Union that they could not attend Union informational meetings or receive information unless they signed union authorization cards. During the campaign, I was asked to sign a union card and told that if I signed, I could attend the union meetings.

13. I have been told by some Novelis employees who signed union authorization cards that they had second thoughts and asked to have their cards returned to them and their requests were denied.

14. I would like the opportunity to intervene and present evidence and testimony regarding any relevant facts in the pending NLRB legal proceedings. I believe that I, along with my co-workers, have a unique perspective to add that is not adequately represented by the Company, the Union, or the NLRB in these proceedings.

15. I make the foregoing statements under penalty of perjury.

Michael Malone
MICHAEL MALONE

Sworn to before me this 10th day of July, 2014.

Sunny Tice
Notary Public

SUNNY I. TICE
Notary Public, State of New York
No. 02TI6257328
Qualified in Oswego County
Commission Expires March 12, 2016

2346726.1

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2014, a true and accurate copy of the foregoing Motion to Intervene was electronically filed through the National Labor Relations Board's electronic filing system and that a copy was served upon the following individuals by e-mail:

Kurtis A. Powell, Esq.
Hunton & Williams LLP
Attorneys for Employer
600 Peachtree Street NE, Suite 4100
Atlanta, Georgia 30308
Telephone: (404) 888-4000
Facsimile: (404) 888-4190
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Brian J. LaClair, Esq.
Blitman & King
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bjlaclair@bklawyers.com

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National Labor Relations Board
Attorney for Region 3
Buffalo Office, Region 3
Niagara Center Bldg., Suite 630
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Brad Manzolillo, Esq.
Organizing Counsel
United Steelworkers
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Five Gateway Center
Pittsburgh, PA 15222
Telephone: (412) 562-2529
Facsimile: (412) 562-2555
bmanzolillo@usw.org

Kerry Langan

Kerry W. Langan, Esq.

2347641.1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION

and **Cases:** **03-CA-121293**
03-CA-121579
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO **03-CA-122766**
03-CA-123346
03-CA-123526
03-CA-127024
03-CA-126738

NOVELIS CORPORATION **Case:** **03-RC-120447**

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO

NOVELIS CORPORATION'S MOTION TO CLARIFY RESPONDENT'S EXHIBIT 292

Respondent Novelis Corp. brings forth this motion to clarify[1] the record with respect to Respondent's Exhibit 292, admitted by the Administrative Law Judge on September 9, 2014. Respondent's Exhibit 292 is a composite of three versions of the three page February 10 letter from NLRB Agent Patricia Petock to Novelis' senior counsel Mr. Dobkin- the original version, a blurred out version and a redacted version. *See* Tr. 1392-99. Following the close of the hearing, the court reporter provided a copy to Respondent's counsel's staff of Respondent's Exhibit 292 that is only one page in length (*see* Exhibit A), rather than the nine pages which comprise the composite exhibit. As is clear from discussions on the record as to this exhibit (Tr. 1392-99), the

[1] Novelis is in the process of reviewing the hearing transcript and anticipates filing a separate motion to correct portions of the transcript that were incorrectly transcribed by the court reporter.

court reporter does not have the correct version of Respondent's Exhibit 292. Wherefore, Respondent respectfully requests that the Administrative Law Judge clarify that the correct version of Respondent's Exhibit 292 is the version that is attached hereto as Exhibit B and ensure that the record be corrected accordingly.

Respectfully submitted this 18th day of November, 2014.

HUNTON & WILLIAMS LLP

/s/_Kurt A. Powell____
Kurt A. Powell
Robert T. Dumbacher
Bank of America Plaza, #4100
600 Peachtree Street, NE
Atlanta, GA 30308
Telephone: 404-888-4000
Facsimile: 404-888-4190
Email: kpowell@hunton.com
Email: rdumbacher@hunton.com

Kurt G. Larkin
Riverfront Plaza, East Tower
951 E. Byrd Street
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Telephone: 804-788-8200
Facsimile: 804-788-8218
Email: klarkin@hunton.com

Kenneth L. Dobkin
Senior Counsel
Novelis Corporation
2560 Lenox Road, Suite 2000
Atlanta, Georgia
Email: ken.dobkin@novelis.com

Attorneys for Respondent
NOVELIS CORPORATION

CERTIFICATE OF SERVICE

I certify that on this 18th day of November, 2014, I caused the foregoing to be electronically filed with the National Labor Relations Board at http://nlrb.gov and a copy of same to be served by e-mail on the following parties of record:

Administrative Law Judge Michael Rosas
NLRB Division of Judges
100 14th Street NW
Washington, DC 20570
michael.rosas@nlrb.gov

Brian J. LaClair, Esq.
Blitman & King
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Syracuse, NY 13204
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Nicole Roberts, Esq.
Lillian Richter, Esq.
Linda M. Leslie, Esq.
National Labor Relations Board
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Buffalo, NY 14202
nicole.roberts@nlrb.gov
linda.leslie@nlrb.gov

Thomas G. Eron, Esq.
Peter A. Jones, Esq.
Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, NY 13202
teron@bsk.com
pjones@bsk.com

/s/ Robert T. Dumbacher

EXHIBIT A

From: Petock, Patricia E. [mailto:Patricia.Petock@nlrb.gov]
Sent: Monday, February 10, 2014 10:42 AM
To: Ken Dobkin
Subject: LTR.03-CA-121293.EAJA
Ken,
As we previously discussed, I am providing additional evidence concerning the charges.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

February 10, 2014

Kenneth L. Dobkin, Senior Counsel
NOVELIS CORPORATION
3560 Lenox Road
Suite 2000
Atlanta, GA 30326

Re: Novelis Corporation
Case 03-CA-121293

Dear Mr. Dobkin:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before **February 26, 2014**, with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows.

- On January 21, 2014, Operations Leader Re-melt **Duane Gordon** removed pro union literature from the break room and left anti-union literature in its place.
- On or about January 23, 2014, Maintenance Remount supervisor **Tom Granbois** tore down union literature from the remount cafeteria board.
- On January 28, 2014, **CASH Operations Leader Craig Formoza interrogated** an employee when he asked him how he felt about the Union. Formoza **threatened** the employee that the Employer might change to an S-21 schedule if the Union is elected. Management would eliminate one shift and would lay off employees in order of seniority.

R
Exh. No: 292 Received ___ Rejected ___
Case No.: 03-CA-121293 et al
Case Name: Novelis Corp
No. Pgs: ___ Date: 9-9-14 Rep.: Ann

Resp.
Ex. 292

EXHIBIT B

From: Petock, Patricia E. [mailto:Patricia.Petock@nlrb.gov]
Sent: Monday, February 10, 2014 10:42 AM
To: Ken Dobkin
Subject: LTR.03-CA-121293.EAJA
Ken,
As we previously discussed, I am providing additional evidence concerning the charges.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

February 10, 2014

Kenneth L. Dobkin, Senior Counsel
NOVELIS CORPORATION
3560 Lenox Road
Suite 2000
Atlanta, GA 30326

Re: Novelis Corporation
Case 03-CA-121293

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Allegations: The allegations for which I am seeking your evidence are as follows.

- On January 21, 2014, Operations Leader Re-melt **Duane Gordon** removed pro union literature from the break room and left anti-union literature in its place.
- On or about January 23, 2014, Maintenance Remount supervisor **Tom Granbois** tore down union literature from the remount cafeteria board.
- On January 28, 2014, **CASH Operations Leader Craig Formoza interrogated** an employee when he asked him how he felt about the Union. Formoza **threatened** the employee that the Employer might change to an S-21 schedule if the Union is elected. Management would eliminate one shift and would lay off employees in order of seniority.

Resp. Ex. 292

- **Plant Manager Chris Smith and Human Resource Manager Peter Sheftic** announced to employees that it was restoring 1 ½ premium pay for Sunday and vacation and holiday time would be considered "hours worked" in the calculation of overtime in response to learning that there was an ongoing union organizing campaign.

- On January 23, 2014 **Associate Operations Leader Jason Bro** held a meeting with the anneal metal movement crew in the furnace room. Bro informed employees that they could not wear "vote yes" stickers on their uniforms. If they wore them on their personal clothing, the sticker should not be visible. During this meeting, **Bro threatened** employees that they were "at-will" employees and didn't have to work there if they did not like it. **Bro polled** employees by asking if they knew what they had to do if they did not want the Union. When no one responded, **Bro intimidated** them by addressing an employee by name and told him to "say vote no." After the employee repeated what Bro told him to say, Bro went around the room to the other employees and asked them what they had to do if they did not want the Union. Before leaving the furnace room, an employee asked a question regarding posting union literature. **Jason Bro** responded that he was removing all union literature, pro and con, from bulletin boards. Before leaving the room, **Supervisor Dan Taylor** who entered towards the end of the meeting, took all union paraphernalia including a union organizer handbook and "vote yes" sticker pages with him.

- In January 2014, **Jason Bro** entered the pulpit and removed union literature that prompted employees to vote one way or the other. Bro then **interrogated** an employee in the room when he asked him if he knew who put the union literature in the room. Before the employee answered, Bro gave the employee three names of employees and asked if it was any of them.

- On January 29, 2014, **Jason Bro** held a meeting in the pulpit similar to the January 23, 2014 meeting. **Bro polled and intimidated employees** by asking them "if you don't want a union in here, how do you vote?"

- On January 21, 2014, **Jason Bro** removed union literature from the bulletin board in the cold mill locker room hall where employees are allowed to post.

Board Affidavits: I am requesting to take affidavits from **Duane Gordon, Tom Granbois, Craig Formoza, Chris Smith, Peter Sheftic, Jason Bro, and Dan Taylor** and any other individuals you believe have information relevant to the investigation of the above-captioned matter. If you do not allow the Board agent to take sworn affidavits from representatives who may have relevant information, the Agency will consider that to constitute less than complete cooperation in the investigation of the charge.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you are requested to present your evidence in this matter by **February 26, 2014**. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to **www.nlrb.gov**, select **File Case Documents,** enter the **NLRB case number,** and follow the detailed instructions. If I have not received all your evidence by that time or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (716)551-4944, or e-mail, patricia.petock@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

Patricia Petock

PATRICIA E. PETOCK

Field Examiner

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716) [redacted]
Fax: (716) [redacted]

February 10, 2014

Kenneth L. Dobkin, Senior Counsel
NOVELIS CORPORATION
3560 Lenox Road
Suite 2000
Atlanta, GA 30326

Re: Novelis Corporation
Case 03-CA-121293

Dear Mr. Dobkin:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before **February 26, 2014,** with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows.

- On January 21, 2014, [redacted] removed pro union literature from the break room and left anti-union literature in its place.
- On or about January 23, 2014, [redacted] tore down union literature from the remount cafeteria board.
- On January 28, 2014, [redacted] an employee when he asked him how he felt about the Union, [redacted] **threatened** the employee that the Employer might change to an S-21 schedule if the Union is elected. Management would eliminate one shift and would lay off employees in order of seniority.
- **Plant Manager Chris Smith and Human Resource Manager Peter Sheftic** announced to employees that it was restoring 1 ½ premium pay for Sunday and vacation and holiday time would be considered "hours worked" in the calculation of overtime in response to learning that there was an ongoing union organizing campaign.
- On January 23, 2014 [redacted] held a meeting with the anneal metal movement crew in the furnace room. [redacted] informed employees that they could not wear "vote yes" stickers on their uniforms. If they wore them on their personal clothing, the sticker should not be visible. During this meeting, [redacted] **threatened** employees that they were "at-will" employees and didn't have to work there if they did not like it. [redacted] **polled**

Respondent's Exhibit 65-1

employees by asking if they knew what they had to do if they did not want the Union. When no one responded, [redacted] **intimidated** them by addressing an employee by name and told him to "say vote no." After the employee repeated what [redacted] told him to say, [redacted] went around the room to the other employees and asked them what they had to do if they did not want the Union. Before leaving the furnace room, an employee asked a question regarding posting union literature. [redacted] responded that he was removing all union literature, pro and con, from bulletin boards. Before leaving the room, [redacted] who entered towards the end of the meeting, took all union paraphernalia including a union organizer handbook and "vote yes" sticker pages with him.

- In January 2014, [redacted] entered the pulpit and removed union literature that prompted employees to vote one way or the other. [redacted] then **interrogated** an employee in the room when he asked him if he knew who put the union literature in the room. Before the employee answered, [redacted] gave the employee three names of employees and asked if it was any of them.

- On January 29, 2014, [redacted] held a meeting in the pulpit similar to the January 23, 2014 meeting. [redacted] **polled and intimidated employees** by asking them "if you don't want a union in here, how do you vote?"

- On January 21, 2014, [redacted] removed union literature from the bulletin board in the cold mill locker room hall where employees are allowed to post.

Board Affidavits: I am requesting to take affidavits from [redacted] **Chris Smith, Peter Sheftic,** [redacted] and any other individuals you believe have information relevant to the investigation of the above-captioned matter. If you do not allow the Board agent to take sworn affidavits from representatives who may have relevant information, the Agency will consider that to constitute less than complete cooperation in the investigation of the charge.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you are requested to present your evidence in this matter by **February 26, 2014.** Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to www.nlrb.gov, select **File Case Documents,** enter the **NLRB case number,** and follow the detailed instructions. If I have not received all your evidence by that time or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (716) [redacted], or e-mail, [redacted], so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

Patricia Petock

PATRICIA E. PETOCK

Respondent's Exhibit 65-2

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov

February 10, 2014

Kenneth L. Dobkin, Senior Counsel
NOVELIS CORPORATION
3560 Lenox Road
Suite 2000
Atlanta, GA 30326

Re: Novelis Corporation
Case 03-CA-121293

Dear Mr. Dobkin:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before **February 26, 2014**, with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows.

- [redacted]
- [redacted]
- [redacted]
- **Plant Manager Chris Smith and Human Resource Manager Peter Sheftic** announced to employees that it was restoring 1 ½ premium pay for Sunday and vacation and holiday time would be considered "hours worked" in the calculation of overtime in response to learning that there was an ongoing union organizing campaign.
- [redacted]

Respondent's Exhibit 66-1

[redacted]

- **Date for Submitting Evidence:** To resolve this matter as expeditiously as possible, you are requested to present your evidence in this matter by **February 26, 2014**. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to www.nlrb.gov, select **File Case Documents**, enter the **NLRB case number**, and follow the detailed instructions. If I have not received all your evidence by that time or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

[redacted]

Very truly yours,

Patricia Petock

PATRICIA E. PETOCK

Field Examiner

Respondent's Exhibit 66-2

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

February 10, 2014

Kenneth L. Dobkin, Senior Counsel
NOVELIS CORPORATION
3560 Lenox Road
Suite 2000
Atlanta, GA 30326

Re: Novelis Corporation
Case 03-CA-121293

Dear Mr. Dobkin:

I am writing this letter to advise you that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above-captioned matter. As explained below, I am requesting to take affidavits on or before **February 26, 2014**, with regard to certain allegations in this case.

Allegations: The allegations for which I am seeking your evidence are as follows.

- On January 21, 2014, Operations Leader Re-melt **Duane Gordon** removed pro union literature from the break room and left anti-union literature in its place.
- On or about January 23, 2014, Maintenance Remount supervisor **Tom Granbois** tore down union literature from the remount cafeteria board.
- On January 28, 2014, **CASH Operations Leader Craig Formoza interrogated** an employee when he asked him how he felt about the Union. Formoza **threatened** the employee that the Employer might change to an S-21 schedule if the Union is elected. Management would eliminate one shift and would lay off employees in order of seniority.
- **Plant Manager Chris Smith and Human Resource Manager Peter Sheftic** announced to employees that it was restoring 1 ½ premium pay for Sunday and vacation and holiday time would be considered "hours worked" in the calculation of overtime in response to learning that there was an ongoing union organizing campaign.
- On January 23, 2014 **Associate Operations Leader Jason Bro** held a meeting with the anneal metal movement crew in the furnace room. Bro informed employees that they could not wear "vote yes"

Respondent's Exhibit 67-1

stickers on their uniforms. If they wore them on their personal clothing, the sticker should not be visible. During this meeting, **Bro threatened** employees that they were "at-will" employees and didn't have to work there if they did not like it. **Bro polled** employees by asking if they knew what they had to do if they did not want the Union. When no one responded, **Bro intimidated** them by addressing an employee by name and told him to "say vote no." After the employee repeated what Bro told him to say, Bro went around the room to the other employees and asked them what they had to do if they did not want the Union. Before leaving the furnace room, an employee asked a question regarding posting union literature. **Jason Bro** responded that he was removing all union literature, pro and con, from bulletin boards. Before leaving the room, **Supervisor Dan Taylor** who entered towards the end of the meeting, took all union paraphernalia including a union organizer handbook and "vote yes" sticker pages with him.

- In January 2014, **Jason Bro** entered the pulpit and removed union literature that prompted employees to vote one way or the other. Bro then **interrogated** an employee in the room when he asked him if he knew who put the union literature in the room. Before the employee answered, Bro gave the employee three names of employees and asked if it was any of them.

- On January 29, 2014, **Jason Bro** held a meeting in the pulpit similar to the January 23, 2014 meeting. **Bro polled and intimidated employees** by asking them "if you don't want a union in here, how do you vote?"

- On January 21, 2014, **Jason Bro** removed union literature from the bulletin board in the cold mill locker room hall where employees are allowed to post.

Board Affidavits: I am requesting to take affidavits from **Duane Gordon, Tom Granbois, Craig Formoza, Chris Smith, Peter Sheftic, Jason Bro, and Dan Taylor** and any other individuals you believe have information relevant to the investigation of the above-captioned matter. If you do not allow the Board agent to take sworn affidavits from representatives who may have relevant information, the Agency will consider that to constitute less than complete cooperation in the investigation of the charge.

Date for Submitting Evidence: To resolve this matter as expeditiously as possible, you are requested to present your evidence in this matter by **February 26, 2014**. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to www.nlrb.gov, select **File Case Documents,** enter the **NLRB case number,** and follow the detailed instructions. If I have not received all your evidence by that time or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (716)551-4944, or e-mail, patricia.petock@nlrb.gov, so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

Patricia Petock

PATRICIA E. PETOCK

Field Examiner

Respondent's Exhibit 67-2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION		
and	**Cases:**	**03-CA-121293**
		03-CA-121579
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO		**03-CA-122766**
		03-CA-123346
		03-CA-123526
		03-CA-127024
		03-CA-126738
NOVELIS CORPORATION	**Case:**	**03-RC-120447**
and		
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO		

NOVELIS CORPORATION'S MOTION TO CORRECT THE RECORD

Respondent Novelis Corporporation brings forth this motion to correct the record with respect to all volumes of the hearing transcript. Respondent has analyzed the hearing transcripts and attaches as Exhibit A to this motion an errata sheet which contains proposed corrections to identified transcription errors. Wherefore, Respondent respectfully requests that the Administrative Law Judge correct the record by referring to the errata sheet attached as Exhibit A to this motion.

Respectfully submitted this 3rd day of December, 2014.

HUNTON & WILLIAMS LLP

/s/_Kurt A. Powell_____
Kurt A. Powell
Robert T. Dumbacher

Bank of America Plaza, #4100
600 Peachtree Street, NE
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Kenneth L. Dobkin
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Novelis Corporation
2560 Lenox Road, Suite 2000
Atlanta, Georgia
Email: ken.dobkin@novelis.com

Attorneys for Respondent
NOVELIS CORPORATION

CERTIFICATE OF SERVICE

I certify that on this 3rd day of December, 2014, I caused the foregoing to be electronically filed with the National Labor Relations Board at http://nlrb.gov and a copy of same to be served by e-mail on the following parties of record:

Administrative Law Judge Michael Rosas
NLRB Division of Judges
100 14th Street NW
Washington, DC 20570
michael.rosas@nlrb.gov

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Blitman & King
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/s/ Robert T. Dumbacher

Novelis Corporation's Proposed Changes to Hearing Transcript- Volumes 1-18:

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
2	111:5	Judge Rosas	alive	aligned
2	113:24	Powell	inconsistent	consistent
2	114:8	Powell	ism	is,
2	116:8	Judge Rosas	revere	reverse
2	131:1	Ridgeway	filed	files
2	132:9	CHANGE	Mr. Larkin	Ms. Leslie
2	134:11	CHANGE	Mr. Larkin	Ms. Leslie
2	147:15	Powell	Unite	United
2	150:16-18	Powell	restoration of Sunday premium pay and employee's use of Sunday – personal time on Sunday as time worked at a time when no service charge had been filed.	restoration of Sunday premium pay and employees' use of Sunday – personal time on Sunday as time worked at a time when no such charge had been filed.
2	151:1-8	Powell	benefit at a retroactive of January 1st. And so the Board has placed directly into evidence, address that issue, the question of whether or not the Union had filed a charge that questions related to the redacted Board letter, and it's all a part of the same facts and circumstance. And this Witness has testified related to those, and I think it's within the scope of cross-examination once they're opened the door to "Did you ever file a charge on this? Die employees	benefit retroactive to January 1st. And so the Board has placed directly into evidence, address that issue, the question of whether or not the Union had filed a charge. That question's related to the redacted Board letter, and it's all a part of the same facts and circumstance. And this Witness has testified related to those, and I think it's within the scope of cross-examination once they're opened the door to "Did you ever file a charge on this? Did employees . . . .
2	156:8	Powell	scopes	scope
2	164:8	CHANGE	Ms. Leslie	Judge Rosas
2	166:10	Powell	Donovick	Dobkin

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
2	167:15	Powell	portrait	portray
2	167:19	Powell	was sent	was not sent (add "not" before sent)
2	168:1	Leslie	that	what
2	169:12	Powell	indicted	indicated
2	169:17	Powell	that it was a fabricated letter	that it was not a fabricated letter
2	172:17	Ridgeway	to	go
2	173:10-11	Powell	It says "above captioned attached matter" correct? "I am writing this letter to advice you" --	It says "above captioned matter" correct? "I am writing this letter to advise you" --
2	173:13-15	Powell	-- "that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above attached matter" do you see that?	-- "that it is now necessary for me to take evidence from your client regarding the allegations raised in the investigation of the above captioned matter" do you see that?
2	176:22	Powell	alternated	altered
2	180:18	Powell	Complain	Complaint
2	183:2	Judge Rosas	I'll	You'll
2	184:6	Judge Rosas	to no	or not
2	186:2	Powell	proceeds	proceedings
2	190:4	Eron	hadn't	had
2	190:13	Eron	haven't	have
2	192:25	CHANGE	Mr. Powell	Judge Rosas
2	194:17	Eron	accurate	accurately
2	194:18	Eron	support the	support of the [add "of" before the]
2	196:20	Leslie	employee's	employees
2	196:21	Leslie	contract	contact
2	198:2	Leslie	as	ask
2	199:3	Leslie	internship	individuals
2	205:21	CHANGE	Mr. LaClair	Mr. Powell
2	205:23	CHANGE	Mr. LaClair	Mr. Powell

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
2	207:21	CHANGE	Mr. Powell	Judge Rosas
2	208:4	Powell	that were	that "you" were [add "you" before were]
2	212:15	CHANGE	Mr. LaClair	Mr. Eron
2	225:5	Powell	Petitioner	Mr. Powell
2	242:2	Roberts	kneeling, metal movement	annealing metal movement
2	242:7	Roberts	kneeling and metal movement	annealing metal movement
2	242:9	Roberts	kneeling	annealing
2	243:25	Roberts	kneeling	annealing
2	245:7	Abare	LCAN	Alcan
2	255:21	Roberts	a knee metal movement, a kneeling	annealing metal movement
2	272:3	Roberts	Complain	Complaint
2	294:23	Abare	cars	cards
2	299:3	Powell	Lyndeer	LaVere
2	329:21	Dobkin	adamant	absurd
2	347:17	Powell	an in globo	to put in a global
2	389:20	Larkin	8(o)(3)(5)	803(5)
2	389:25	Leslie	8(o)(3)(5)	803(5)
2	395:7	Judge Rosas	8(o)(3)(5)	803(5)
3	410:3	Leslie	what signatures	wet signatures
3	410:7	Leslie	what signatures	wet signatures
3	410:10	Roberts	web signatures	wet signatures
3	412:23	Roberts	web signature	wet signature
3	412:24	Roberts	web signature	wet signature
3	414:16	Leslie	right signatures	wet signatures
3	418:24	Leslie	web signature	wet signature
3	420:14	CHANGE	Mr. Powell	Mr. LaClair
3	420:25	CHANGE	Mr. Eron	Mr. Powell
3	431:20	Abare	whole milk	cold mill
3	464:11	Abare	Dufor's	Dufore's

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
3	464:13	Abare	Dufor	Dufore
3	469:17	Abare	Schaftic	Sheftic
3	469:25	Abare	Dufor	Dufore
3	470:3	Abare	Dufor	Dufore
3	477:5	Abare	Dufor's	Dufore's
3	484:5	CHANGE	Mr. Powell	Ms. Roberts
3	492:17	Abare	Holvetter	Hovater
3	492:23	Abare	Holvetter	Hovater
3	494:2	Abare	Holvetter	Hovater
3	510:17	Abare	point	plant
3	510:23	Abare	Remold	Remelt
3	510:24	Abare	Remold	Remelt
3	518:11	Larkin	utilization	unionization
3	522;15	Larkin	Shaftic	Sheftic
3	531:14	Abare	Shaftic	Sheftic
3	533:8	Manzolillo	Mr. Manolillo	Mr. Manzolillo
3	538:13, 15, 18 539:7; 564:19	LaClair	Mr. LeClair	Mr. LaClair
3	549:7	Larkin	Beman	Beeman
3	550:9	Abare	ou6t	out
3	557:6, 15	Larkin	Spear	Spier
3	557:14	Abare	John Spears, John Spear	John Spier, John Spier
3	557:22	Larkin	Spears	Spier
3	558:21, 22, 23, 24	Larkin	Spears, Spear	Spier
3	559:10, 12, 15	Larkin	Spear	Spier
3	560:2	Larkin	Ann Smith	Anne Smith
3	562:10	Abare	Cornelius	Kunelius
3	562:23	Larkin	Cornelius	Kunelius
3	563:20	Larkin	Mortons	Martens
3	569:22	Larkin	Witcomb	Whitcomb

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
3	574:22	Powell	Rite Line	Wright-Line
3	575:3	Powell	Rite Line	Wright-Line
3	577:9-10	Larkin	I would just like to think all the Fuck Tards out there to know that if they --	I would just like to thank all the Fuck Tards out there that voted no and that they --
3	577:20-22	Larkin	I would just like to think all the Fuck Tards out there that voted no, and that they wanted to give them another chance.	I would just like to thank all the Fuck Tards out there that voted no, and that they wanted to give them another chance.
3	581:18	Manzolillo	Mr. Manzolilli	Mr. Manzolillo
3	599:13	Powell	1156	116
3	600:24	Abare	Shaftic	Sheftic
3	610:4	Manzolillo	Mr. Manzolilli	Mr. Manzolillo
3	610:16	Judge Rosas	tow	toe
3	612:21	Roberts	Helvetter	Hovater
3	620:8	Dumbacher	Helvetter	Hovater
4	647:21	Powell	M-A-R-T-E-N-FS	M-A-R-T-E-N-S
4	648:16	Leslie	Allan	Allen
4	649:1	Cowan	Allan	Allen
4	705:4	Dumbacher	Whose	Who's
4	748:6	Judge Rosas	liability	reliability
4	768:4	Parker	Boisic	Buyzuck
4	771:16	Powell	Palmieri	Parker
4	782:16, 17	Jones	Wine	Wyman
5	800:7	Powell	Matt Stevens	DeStevens
5	807:22	Roberts	Weiss	Wise
5	807:23	Roberts	Weiss'	Wise's
5	808:3	Roberts	Weiss	Wise
5	803:8	Judge Rosas	Weiss'	Wise's
5	809:2, 7	Roberts	Weiss	Wise

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
5	816:14	Powell	Guillemo	Guillermo
5	818:7	Powell	Web	Webb
5	820:18, 19	Powell	coal	cold
5	822:17	Powell	on of these	one of these
5	822:25	Powell	Weiss	Wise
5	823:11	Powell	did you request	did he request
5	824:19, 23	Roberts	Weiss	Wise
5	825;5, 9	Roberts	Weiss	Wise
5	826:6	Roberts	Weiss'	Wise's
5	827:3	CHANGE	Ms. Roberts	Mr. Powell
5	827:13, 18	Roberts	Weiss	Wise
5	828:7, 20	Roberts	Weiss	Wise
5	829:19, 22	Roberts	Adus	Jadus
5	830:3	Jadus	J. Adus	Jadus
5	830:4	Jadus	J.-A-D-U-S,	J-A-D-U-S,
5	833:18	Powell	Adus	Jadus
5	834:17	Roberts	Rolin	Rollin
5	834:23	Rollin	Rolin, R-O-L-I-N	Rollin, R-O-L-L-I-N
5	839:6, 8, 13, 15	Powell	Formosa	Formoza
5	839:19, 23	CHANGE	Mr. Powell	Judge Rosas
5	841:17	CHANGE	Mr. Manzolillo	Mr. Dobkin
5	841:18	Dobkin	Formosa	Formoza
5	841:21, 24	LaClair	Formosa	Formoza
5	842:3	Judge Rosas	Formosa	Formoza
5	842:17	Judge Rosas	tows	toes
5	844:16	Powell	Rolin	Rollin
5	846:17	Powell	Javis	Jadus
5	849:14	Powell	Rolin	Rollin
5	849:18	Powell	Axtel	Axtell
5	849:24	Powell	Bouleway	Boardway

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
5	853:14, 15, 17, 21	Powell	Erond	Emond
5	856:15		RE-CROSS	RE-DIRECT
5	860:24, 25	Larkin	Formosa	Formoza
5	861:3	Larkin	Formosa	Formoza
5	862:1	Larkin	2103	2013
5	864:14	Larkin	Cline	Kline
5	864:16	Gurney	Coil	Cold
5	865:3, 19	Larkin	Coil	Cold
5	865:12	Gurney	Coil	Cold
5	866:23-24	Larkin	Phil Martens	Troy Norton
5	867:5	Larkin	Mr. Martens	Troy Norton
5	867:12	Gurney	Coil	Cold
5	868:14	Larkin	Klein	Kline
5	876:16	NEED to ADD Mr. Han's		Notice of Appearance
5	876:17	CHANGE	Mr. Powell	Mr. Han
5	877:6	Seinoski	David Duran	David Duran or [add "or" after Duran]
5	878:10	CHANGE	Mr. Powell	Mr. Han
5	879:22	CHANGE	Mr. Powell	Mr. Han
5	881:7	CHANGE	Mr. Powell	Mr. Han
5	881:17	Han	J. Scaletta	James Galletta
5	883:2	CHANGE	Mr. Powell	Mr. Han
5	883:25	CHANGE	Mr. Powell	Mr. Eron
5	889:21	Roberts	Maria	Mario
5	892:13	Larkin	"sucktard"	"fucktard"
5	896:6	Leslie	Lacincy	Ascenzi
5	903:3	CHANGE	Mr. Manzolillo	Mr. Powell
5	903:15	Leslie	(indiscernible)	Tom Granbois
5	924:9	CHANGE	Mr. Powell	Mr. Manzolillo
5	925:24	Powell	Simple	Ascenzi

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
5	935:17	Powell	here	her
5	942:16	Powell	despaired	disparaged
5	954:12, 13, 14	Powell	Pierce	Fears
5	961:25	Spencer		Missing “A” for answer
5	962:6, 10	Spencer	Vanella	Valenti
5	962:21	Spencer	Remote	Remelt
5	965:9	Spencer	Remote	Remelt
5	965:21, 22	Powell	DesStevens	DeStevens
5	967:5	Powell	Mitt Frey	Matt Frey
5	970:16, 17, 19, 20	Powell	Longlay	Longley
5	971:23	Powell	McIntire	McIntyre
5	973:7	Spencer	Oleyounyk	Oleyouryk
5	977:7, 8	Spencer	Sweitzer	Schleicher
5	979:1, 4	Powell	Valetti	Valenti
5	981:25	Powell	Starry	Stauring
5	983:3	Powell	Weir	Weier
6	997:25	Roberts	web signature	wet signature
6	998:2, 4, 8	Roberts	web signature	wet signature
6	998:14, 19	Powell	web signature	wet signature
6	1009:12, 13	Powell, Sawyer	Giaffrido	Giuffrida
6	1013:22	Ball	Gingerish	Gingerich
6	1013:22	Ball	Melonie	Melanie
6	1013:23	Ball	Kaylee	Caleb
6	1014:7	Ball	bold-ass	Vote Yes
6	1016:23	Ball	Taylor	Caleb
6	1018:1	Ball	Kaylee	Caleb
6	1018:21	Ball	‘Note, yes’,	‘Vote, yes’,
6	1023:3	Ball	Kaylee	Caleb
6	1023:3	Ball	Melonie	Melanie
6	1023:4	Ball	Personins	Personius

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
6	1025:13	Ball	bold	en vogue
6	1051:1	Blunt	glama	glamma
6	1051:2	Blunt	meccina	messina
6	1053:19	Blunt	courter	counter
6	1058:22	Dumbacher	"OPIT"	pulpit
6	1083:2, 4	Wyman	Saladin	Salladin
6	1084:19, 23	Wyman	Hyburnins	Hibernians
6	1087:3	Wyman	Hyburnins	Hibernians
6	1088:4	Wyman	Hyburnins	Hibernians
6	1089:7, 15	Wymans	Hyburnins	Hibernians
6	1098:4, 5, 7	Larkin, Wyman	Masvicca	Masuicca
6	1099:12, 14, 23	Larkin	Renaldo	Rinaldo
6	1101:2	Wyman	Hyburnins	Hibernians
6	1102:4	Larkin	Mathew	Matthew
6	1124:13,15,17	Larkin	"bead stop"	feedstock
6	1131:25	Larkin	Shortslof	Shortslef
6	1135:15	Larkin	an Mr. Shortslof	and Mr. Shortslef
6	1147:22, 23	Roberts	web signatures	wet signatures
6	1148:9	Roberts	web signatures	wet signatures
6	1150:12	Roberts	web signatures	wet signatures
7	1180:4	Judge Rosas	admissibly	admissible
7	1181:18-23	Larkin	disparaged the Union by displaying a redacted bard letter and telling employees that the Union had filed a charge – telling the employees that the Union had filed a charge regarding the restoration of Sunday premium pay and employees use of personal time on Sunday as time worked, at a time when no such charge had been filed.	"disparaged the Union by displaying a redacted board letter and telling employees that the Union had filed a charge – telling the employees that the Union had filed a charge regarding the restoration of Sunday premium pay and employees' use of personal time on Sunday as time worked, at a time when no such charge had been filed."
7	1182:2-6	Larkin	disparaged the Union by displaying a	"disparaged the Union by displaying a

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
			redacted board letter and telling employees that the Union had filed a charge. The Union had filed a charge regarding the restoration of Sunday premium pay and employees use of personal time of Sunday as time worked at time when no such charge had been filed.	redacted board letter and telling employees that the Union had filed a charge. The Union had filed a charge regarding the restoration of Sunday premium pay and employees' use of personal time of Sunday as time worked at time when no such charge had been filed."
7	1182:10	Larkin	employees	employees'
7	1185:6	Manzolillo	1(cd)	1(dd)
7	1190:2	Powell	violate	violated
7	1190:8	Powell	making	make a
7	1193:10	Manzolillo	1(cd)	1(dd)
7	1214:1	Dumbacher	Did you the board--	Did you tell the board--
7	1220:11	Shane Burton	By	My
7	1229:2	Shane Burton	Bangermont	Vanderbaan
7	1249:10	Stephen Wheeler	Hass	Hess
7	1249:20	Leslie	Hass	Hess
7	1250:2	Leslie	Hass	Hess
7	1251:12	Dumbacher	Hass	Hess
7	1251:17	Stephen Wheeler	kneeling zone movement	annealing metal movement
7	1252:20	Dumbacher	Hass	Hess
7	1253:19	Dumbacher	Hass	Hess
7	1268:10	Powell	remote	remelt
7	1273:23	Ray Watts	Gallow	Barbagallo
7	1273:25	Ray Watts	Gallow	Barbagallo
7	1275:15	Ray Watts	Coroccio	Caroccio
7	1276:23	Ray Watts	Giacondo	Giocondo
7	1281:13	Ray Watts	Colbatter	Hovater

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7	1282:16	Ray Watts	remote	remelt
7	1282:19	Ray Watts	Jac	Jack
7	1282:20	Larkin	Jac	Jack
7	1282:21	Ray Watts	Jac	Jack
7	1282:22	Larkin	Jac	Jack
7	1323:6	Larkin	Lecerto	Losurdo
7	1323:10	Ray Watts	Lecerto	Losurdo
7	1323:12	Larkin	Lecerto	Losurdo
7	1323:16	Ray Watts	Lecerto	Losurdo
7	1324:2	Ray Watts	Lecerto	Losurdo
7	1325:16	Larkin	Lecerto	Losurdo
7	1326:19	Larkin	Lecerto	Losurdo
7	1327:1	Larkin	Lecerto	Losurdo
7	1329:22	Larkin	Lecerto	Losurdo
7	1330:8	Larkin	Lecerto	Losurdo
7	1330:10	Larkin	Lecerto	Losurdo
7	1330:16	Larkin	Lecerto	Losurdo
7	1330:22	Ray Watts	Jac	Jack
7	1330:25	Larkin	Jac	Jack
7	1334:23	Larkin	Lecerto	Losurdo
7	1337:3	Leslie	Lecerto	Losurdo
7	1337:17	Larkin	Lecerto	Losurdo
7	1344:23	Larkin	Gabriel	Garbrielle
7	1345:13	Larkin	Lecerto	Losurdo
7	1345:15	Larkin	Lecerto	Losurdo
7	1345:18	Larkin	Lecerto	Losurdo
7	1358:13	Judge Rosas	object	objection
7	1363:25	Brandon Delaney	Billy Ire	Billy Yaner
7	1364:8	Brandon	Ritz	Reitz

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		Delaney		
7	1378:11	Brandon Delaney	Biscuit	Bizkit
8	1391:18	N/A	GC-292	R-292
8	1403:8	Joseph Griffin	Axtel	Axtell
8	1403:9	Dumbacher	Axtel	Axtell
8	1415:2	Dumbacher	in	and
8	1415:7	N/A	Elliot	Dumbacher
8	1415:9	Dumbacher	today	to today
8	1421:17	Leo Rookey	Everette	Everett
8	1429:25	Leo Rookey	Everette	Everett
8	1432:8	Larkin	affect	effect
8	1432:14	Judge Rosas	Presence	Present
8	1433:3	Leslie	presence	present
8	1436:8	Judge Rosas	presence	present
8	1436:10	Dumbacher	presence	present
8	1436:14	Dumbacher	in	of
8	1443:10	Dumbacher	fucktart	fucktard
8	1445:6	Michael Clark	check	shop
8	1448:17	Michael Clark	Ernest Snyder	Ernie Tresidder
8	1458:18	Larkin	Bridgeway	Ridgeway
8	1465:12	Larkin	can	did
8	1465:25	Michael Clark	Everette	Everett
8	1467:13	Larkin	Watch	Watts
8	1477:25	Justin Waters	kneeling	annealing
8	1478:10	Justin Waters	kneeling	annealing
8	1482:6	Dumbacher	of	or
8	1512:13	Roberts	web	wet
9	1537:22	Judge Rosas	Sandrew	Sandron
9	1537:24	Judge Rosas	Lonagan	Lonergan

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9	1537:25	Judge Rosas	Nogales	Dallas
9	1538:8	Judge Rosas	Sandrew	Sandron
9	1557:17	Jacobus Vanderbaan	Valente	Valento
9	1575:15	Powell	employees	employees'
9	1588:8	Leslie	Martin	Martens
9	1590:16	Larkin	totality irrelevant circumstances	totality of the relevant circumstances
9	1590:24	Larkin	Martin	Martens
9	1591:11	Larkin	Martin	Martens
9	1591:20	Larkin	Martin	Martens
9	1592:1	Larkin	Martin	Martens
9	1618:16	Michael Niver	Bert Pine	Burt Knight
9	1618:21	Michael Niver	Meyers	Myers
9	1618:22	Larkin	Meyers	Myers
9	1619:15	Michael Niver	Renault	Remelt
9	1620:20	Michael Niver	Coke	Coca
9	1627:7	Larkin	meetings.	meetings?
9	1653:13	Manzolillo	Martin	Martens
9	1661:7	Larkin	analysis	notice
9	1667:15	Powell	associate?	associate leader?
9	1675:2-6	David Bouchard	Well, Sanova (ph) was the main contractor for the line. Abner was contracted to build our furnace. CH2M Hill was part of the whole project installation. KOHL was installation and alignment. Ground Hole (ph) Electric was there.	Well, Tenova was the main contractor for the line. Ebner was contracted to build our furnace. CH2M Hill was part of the whole project installation. Hohl was installation and alignment. Rombough Electric was there.
9	1692:23	Powell	we	they
9	1694:21	Powell	talking	fucking
10	1727:12	Judge Rosas	directed	admitted

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10	1729:9	Leslie	Justin Crawford	just and proper
10	1741:9	Rob Darling	Meyers	Myers
10	1741:10	Larkin	Meyers	Myers
10	1741:12	Larkin	Meyers	Myers
10	1741:21	Rob Darling	Shutts	Shutt
10	1741:22	Larkin	Shutts	Shutt
10	1741:24	Larkin	Shutts	Shutt
10	1746:4	Rob Darling	Shutts	Shutt
10	1746:5	Larkin	Shutts	Shutt
10	1747:9	Larkin	Shutts	Shutt
10	1747:18	Larkin	Shutts	Shutt
10	1747:23	Larkin	Shutts	Shutt
10	1748:14	Larkin	Shutts	Shutt
10	1748:24	Larkin	Shutts	Shutt
10	1751:8	Larkin	Shutts	Shutt
10	1752:7	Larkin	Saramont and Terra Plant	Fairmont and Terre Haute Plant
10	1752:14	Larkin	Saramont and Terra health plans	Fairmont and Terre Haute plants
10	1753:2	Larkin	Shutts	Shutt
10	1753:3	Larkin	Saramont, and Terra Haute	Fairmont, and Terre Haute
10	1753:10	Larkin	Shutts	Shutt
10	1754:5	Rob Darling	Shutts	Shutt
10	1757:4	Rob Darling	x-wife	ex-wife
10	1767:14	Larkin	Gibbs	Gissel
10	1768:16-17	Larkin	Gisal	Gissel
10	1769:5	Larkin	Gisel	Gissel
10	1772:17	Rob Darling	Tossario	Tesoriero
10	1772:18	Rob Darling	Palsley	Towsley
10	1772:18	Rob Darling	Bert Ike	Burt Knight
10	1775:23	Roberts	Dowling	Darling
10	1776:6	Leslie	Dowling	Darling

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10	1777:5	Leslie	Dowling	Darling
10	1784:3	Leslie	Jones	Darling
10	1793:3	Rob Darling	Tossario	Tesoriero
10	1794:19	Rob Darling	Shutts	Shutt
10	1796:16	Judge Rosas	profer	proffer
10	1796:18	Leslie	profer	proffer
10	1796:21	Leslie	profer	proffer
10	1796:22	Larkin	profer	proffer
10	1796:24	Larkin	profer	proffer
10	1797:14	Larkin	Polaski	Pulaski
10	1798:14	Larkin	Gisel	Gissel
10	1799:25	Lewis LaClair	Schott	Shutt
10	1800:16	Larkin	CASH Fortune Facility	CASH Manufacturing Facility
10	1801:25	N/A	Wagner	Larkin
10	1802:2	Lewis LaClair	a kneeling	annealing
10	1805:17	Lewis LaClair	re-mill	remelt
10	1809:25	Lewis LaClair	January 11	June 25
10	1813:16	Leslie	Union	Company
10	1814:11	N/A	Mr. Powell	Leslie/Roberts
10	1814:14	N/A	Mr. Powell	Manzolillo
10	1815:14	Powell	could	would
10	1816:4	Leslie	Duchen	Duschen
10	1816:6	Leslie	Duchen	Duschen
10	1819:11	N/A	Leslie	Larkin
10	1823:16	Powell	Were	Where
10	1825:14	Scott Baum	Gesider	Tresidder
10	1825:15	Powell	Gesider	Tresidder
10	1828:9	Scott Baum	Tender	Tedford
10	1831:16	Larkin	Leslie	Larkin
10	1832:11	Powell	Culton	Pelton

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10	1832:12	Scott Baum	Gesider	Tresidder
10	1832:13	Powell	Gesider	Tresidder
10	1833:20	Powell	Genessee	Tresidder
10	1836:10	Powell	linger effect	lingering effects
10	1838:20	Roberts	profer	proffer
10	1841:5	Powell	profer	proffer
10	1841:22	Powell	profer	proffer
10	1842:15-16	Powell	a-shit, sons of bitches, and worthless a-shit and fucked.	day shift sons of bitches, and worthless day shift fucks.
10	1844:2	Roberts	profer	proffer
10	1844:21	Larkin	Pugow	Bugow
10	1844:22	N/A	Pugow	Bugow
10	1845:2	John Bugow	Pugow	Bugow
10	1845:9	Larkin	Pugow	Bugow
10	1846:8	John Bugow	Trasider	Tresidder
10	1846:9	John Bugow	Shrekengaus	Schrecengost
10	1846:11	John Bugow	Shrekengaus	Schrecengost
10	1846:12	Larkin	Shrekengaus	Schrecengost
10	1846:14	Larkin	Trasider	Tresidder
10	1847:19	John Bugow	Union	University
10	1847:20	Larkin	Pugow	Bugow
10	1847:22	John Bugow	Folsom	Fulton
10	1852:17	Larkin	profer	proffer
10	1853:20	Larkin	Pugow	Bugow
10	1855:12	Larkin	Pugow	Bugow
10	1855:18	Judge Rosas	profer	proffer
10	1857:9	Larkin	Pugow	Bugow
10	1857:20	Larkin	Sider	Tresidder
10	1859:7	Judge Rosas	profer	proffer
10	1862:1	Larkin	Pugow	Bugow

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10	1863:3	Larkin	Pugow	Bugow
10	1863:14	Larkin	Pugow	Bugow
10	1864:4	Larkin	Pugow	Bugow
10	1864:17	John Bugow	Trasider	Tresidder
10	1864:19	Larkin	Trasider	Tresidder
10	1864:25	Larkin	Trasider	Tresidder
10	1865:7	Larkin	Trasider	Tresidder
10	1865:14	Larkin	Pugow	Bugow
10	1866:12	Larkin	Pugow	Bugow
10	1867:6	Larkin	Pugow	Bugow
10	1868:4	Larkin	profer	proffer
10	1869:2	Larkin	Pugow	Bugow
10	1869:8	Larkin	Pugow	Bugow
10	1869:11	Larkin	Pugow	Bugow
10	1870:4	Manzolillo	Pugow	Bugow
10	1882:16	John Whitcomb	lay	was
10	1882:17	John Whitcomb	Greg's	Everett's
10	1901:1	N/A	Hendry	Manzolillo
11	1915:24	Jon Storms	Patayne	Patane
11	1918:1	Jon Storms	Neylan	anneal
11	1923:24	Larkin	Patayne	Patane
11	1924:7	Larkin	Patayne	Patane
11	1953:3	Powell	should be ignored	should not be ignored
11	1958:24	Dean White	Hotfelder	Hovater
11	1962:23	Judge Rosas	no	not
11	1966:19	Larkin	Hotfelder	Hovater
11	1973:4	Dean White	company suck bullshit	company suckboy shitbag
11	1979: 19	Dean White	neo-metal	anneal metal
11	1980:22	Dean White	Hotfelder	Hovater
11	1981:13	Roberts	Hotfelder	Hovater

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11	1988:7	Larkin	exception	observation
11	1993:18	Brian Thomas	re-melt	remelt
11	1994:2	Brian Thomas	re-melt	remelt
11	1999:6	Powell	asked	ask
11	2010:22	Michael Somers	At the sewer plant	At the Oswego plant
11	2020:18	Michael Somers	re-melt	remelt
11	2027:17	Larkin	Bomb	Baum
11	2030:15	Fred Zych	Braise	Braze
11	2030:16	Powell	Braise	Braze
11	2030:18	Fred Zych	Braise	Braze
11	2030:21	Fred Zych	Meyers	Myers
11	2030:22	Fred Zych	Meyers	Myers
11	2042:11	Roberts	Meyers	Myers
12	2084:16	Richard Farrands	Richard.Ferrands@novelis.com	Richard.Farrands@novelis.com
12	2087:17	Richard Farrands	Dusham	Duschen
12	2091:17	Manzollilo	Brassard	Tresidder
12	2098:25	Richard Farrands	Dusham	Duschen
12	2106:11	Daniel Cartier	Patayne	Patane
12	2106:13	Powell	Patayne	Patane
12	2107:19	Daniel Cartier	Patayne	Patane
12	2107:21-22	Daniel Cartier	300 mechanics	3 mechanics
12	2108:24	Powell	Patayne	Patane
12	2134:12	Michael Malone	Gorney	Gurney
12	2134:13	Larkin	Gorney	Gurney
12	2134:20	Michael Malone	Gorney	Gurney
12	2134:24	Larkin	Gorney	Gurney
12	2135:3	Larkin	Gorney	Gurney

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12	2135:13	Larkin	Gorney	Gurney
12	2135:18	Larkin	Gorney	Gurney
12	2156:18	Mark Caltabiano	Tormino	Taormina
12	2156:19	Powell	Tormino	Taormina
12	2196:16	Justin Pritchard	kneeling	annealing
12	2209:18	Larkin	air com	intercom
12	2230:24	Larkin	VanderBaan	Vanderbaan
12	2231:2	Larkin	VanderBaan	Vanderbaan
12	2231:10	Larkin	VanderBaan	Vanderbaan
12	2231:21	Larkin	VanderBaan	Vanderbaan
12	2232:6	Larkin	VanderBaan	Vanderbaan
12	2246:7	Mark Raymond	Greg	Craig
12	2249:17	Mark Raymond	L cans	Alcan's
12	2256:19	Powell	non-CES	non-CBS
12	2273:1-4	Mark Raymond	But I can tell you the companies that were there were Rondelo Burns (ph), Whole (ph.) was still there, and C&S was there, and Wrigley (ph.) was there, and every one of them that I know of and maybe more.	But I can tell you the companies that were there were Burns Brothers, Hohl was still there, and C&S was there, and Ridley was there, and every one of them that I know of and maybe more.
12	2273:9-11	Mark Raymond	There was Tinova (ph.), there was Eismen (ph.), and I can't remember the name of them, C-H-L or something like that there.	There was Tenova, there was Eisenmann, and I can't remember the name of them, C-H-L or something like that there.
12	2274:21	Mark Raymond	Melody	Melanie
12	2274:22	Powell	Melody	Melanie
12	2280:14	Mark Raymond	Greg	Craig
13	2297:13	N/A	Esweting	Sweeting
13	2387:1	Powell	Ager	Abare
13	2424:14	Robert Nevills	Torraveno	Taormina

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13	2424:15	Powell	Torraveno	Taormina
13	2452:9	Larkin	plant	plan
13	2452:18	Larkin	management	Owego
13	2455:25	John Tesoriero	Camelias	Kunelius
13	2456:2	Powell	Camelias	Kunelius
13	2456:12	Powell	Camelias	Kunelius
13	2457:2	Powell	Camelias	Kunelius
13	2457:4	Powell	Camelias	Kunelius
13	2457:8	Powell	Camelias	Kunelius
13	2456:6	Powell	Alco	Alcoa
13	2469:14	Robert Wise	Bauring	Bowering
13	2469:15	Larkin	Bauring	Bowering
13	2494:23-24	Powell	h is	his
13	2508:25	Manzolillo	Dionson	Johnson
13	2511:20	Powell	Esweting	Sweeting
13	2511:23	N/A	Esweting	Sweeting
13	2512:13	Powell	Esweting	Sweeting
13	2527:7	Powell	Esweting	Sweeting
13	2534:21	Powell	Esweting	Sweeting
13	2535:12	Powell	negotiation	negotiate
13	2535:14	Powell	Esweting	Sweeting
14	2549:3	Judge Rosas	Formosa	Formoza
14	2554:2	Powell	extent	extend
14	2573:20	Dumbacher	VanderBaan	Vanderbaan
14	2581:5	N/A	Q	A
14	2581:6	Daniel Delaney	pulpit	public
14	2582:11	Daniel Delaney	had	have
14	2589:24	Daniel Delaney	even	event
14	2592:11	Daniel Delaney	PHS	DHS
14	2594:6	Judge Rosas	Bowbrick	Daubert

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14	2594:16	Judge Rosas	Bowbrick	Daubert
14	2631:3	Judge Rosas	educed	adduced
14	2645:19	Powell	Axtel	Axtell
14	2645:21	Powell	Axtel	Axtell
14	2663:1	Powell	Axtel	Axtell
14	2688:8	Jason Dexter	(indiscernible)	Scriba
14	2690:19	Jason Dexter	safe	safety
14	2699:2	Powell	is	his
14	2701:1	Dumbacher	Denver District	department
14	2703:21	Stephen Duschen	Shuck	Shutt
14	2703:22	Dumbacher	Shuck	Shutt
14	2703:24	Dumbacher	Shuck	Shutt
14	2711:14	Anthony Caltabiano	Tormino	Taormina
14	2711:15	Powell	Tormino	Taormina
14	2711:20	Powell	Tormino	Taormina
14	2711:23	Anthony Caltabiano	Tormino	Taormina
14	2723:19	Mark Sharkey	Shuck	Shutt
14	2724:2	Mark Sharkey	Cornelius	Kunelius
14	2724:4	Dumbacher	Cornelius	Kunelius
14	2724:12	Mark Sharkey	Ashbee	Ashby
14	2724:14	Dumbacher	Ashbee	Ashby
14	2724:16	Dumbacher	Ashbee	Ashby
14	2724:20	Dumbacher	Cornelius	Kunelius
14	2724:22	Mark Sharkey	Cornelius	Kunelius
14	2725:11	Dumbacher	Cornelius	Kunelius
14	2725:13	Dumbacher	Cornelius	Kunelius
14	2730:5	Leslie	Cornelius	Kunelius

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14	2730:8	Leslie	Cornelius	Kunelius
14	2734:7	Darrel Hunter	Patayne	Patane
14	2734:10	Powell	Patayne	Patane
14	2743:11	Darrel Hunter	Patayne	Patane
14	2742:8	Jason Roy	Shuck	Shutt
14	2753:6	Powell	Seinoski	Scanoski
15	2762:11	Larkin	fi	if
15	2766:24	Larkin	be there as a	prove Abare is a
15	2767:14	Powell	Super9visors	supervisors
15	2769:23	Roberts	restarting	regarding
15	2781:18	Roberts	Gisselle	Gissel
15	2783:12	Zach Welling	Cashman	CASH line
15	2783:19	Zach Welling	Gorney	Gurney
15	2784:3	Powell	Gorney	Gurney
15	2784:14	Powell	Gorney	Gurney
15	2784:17	Powell	Gorney	Gurney
15	2784:22	Powell	Gorney	Gurney
15	2784:24	Zach Welling	Cashline	CASH line
15	2790:3	Zach Welling	Cashline	CASH line
15	2793:8	Roberts	Gorney	Gurney
15	2793:9	Roberts	Gorney	Gurney
15	2793:10	Zach Welling	Cashline	CASH line
15	2793:14	Roberts	Gorney	Gurney
15	2793:17	Roberts	Gorney	Gurney
15	2796:10	Judge Rosas	rule	move
15	2811:11	Roberts	Cashline	CASH line
15	2830:8	Judge Rosas	elation	election
15	2830:23	Manzolillo	Gisselle	Gissel
15	2831:11	Judge Rosas	Gisselle	Gissel
15	2831:23	Judge Rosas	Gisselle	Gissel

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15	2834:3	Roberts	Gisselle	Gissel
15	2834:14	Judge Rosas	Gisselle	Gissel
16	2840:6	N/A	Shortief	Shortslef
16	2840:7	N/A	N/A	David Kuhl 2852
16	2840:28	N/A	Southwrth	Southworth
16	2840:30	N/A	George	Gary
16	2843:23	Manzolillo	issuing claim for clusion	issue claim preclusion
16	2847:23	Richard Lagoe	Anne	Ann
16	2849:5	Powell	N/A	Mr. Han
16	2852:14	Dumbacher	Cool	Kuhl
16	2852:14	N/A	Manzollilo	Dumbacher
16	2852:22	David Kuhl	Cool	Kuhl
16	2856:24	Han	Able	Abel
16	2860:4	Rodney Buskey	R-O-D-N-Y	R-O-D-N-E-Y
16	2861:2	Rodney Buskey	McIntire	McIntyre
16	2869:6	Andrew Quinn	Crop	Prep
16	2870:8	Andrew Quinn	K Schedule	J Schedule
16	2870:16	Andrew Quinn	PDQ Manager	PQD Manager
16	2875:16	Powell	objected	objective
16	2884:8	Andrew Quinn	F*#ktards	Fucktards
16	2884:8	Andrew Quinn	s*#t	shit
16	2886:15	Powell	F*#ktard	Fucktard
16	2886:24	Powell	F*#ktard	Fucktard
16	2887:16	Powell	F*#ktard	Fucktard
16	2887:22	Powell	F*#ktard	Fucktard
16	2888:3	Powell	F*#tard	Fucktard
16	2889:25	N/A	Ms. Roberts	Mr. Powell
16	2894:5	Andrew Quinn	The only I see	The only thing I see
16	2894:18	Powell	F*#ktard	Fucktard
16	2895:19	Powell	F*#ktard	Fucktard

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
16	2925:6	Andrew Quinn	Boyzruck	Boyzuck
16	2925:15	Andrew Quinn	Ray	Larry
16	2946:25	Robert Reed	Cold Melt	Cold Mill
16	2946:25	Robert Reed	Hot Melt	Hot Mill
16	2956:4	Han	Axtel	Axtell
16	2956:19	George Axtell	Rollin	Rolin
16	2956:24	Han	Rollin	Rolin
16	2957:24	Roberts	Rollin	Rolin
16	2958:3	Roberts	Rollin	Rolin
16	2958:18	Han	Rollin	Rolin
16	2958:22	Han	Rollin	Rolin
16	2959:13	N/A	Southwrth	Southworth
16	2959:19	Tim Southworth	S-O-U-T-H-W-R-T-H	S-O-U-T-H-W-O-R-T-H
16	2959:23	Han	Southwrth	Southworth
16	2960:4	Han	Southwrth	Southworth
16	2960:12	Han	Southwrth	Southworth
16	2960:19	Han	Southwrth	Southworth
16	2964:21	Gary Gabrielle	pole	pulpit
16	2986:25	Katherine Toomey	Managing	Management
16	2995:19	Dumbacher	in	is
16	2995:21	Dumbacher	employee's	employees'
16	2996:14	Dumbacher	informed the Union	formed the view
16	2997:9	Dumbacher	and the issue	on the issues
16	2997:9	Dumbacher	wasn't about side	and listen to both sides
16	2998:4	Dumbacher	answering	management
16	2998:6	Dumbacher	provided him them factual experience	provided them with factual experience
16	2998:18-19	Dumbacher	and lay off employees and lay off employees	and lay off employees if the Union was voted in
16	2999:14	Dumbacher	Vanderbond	Vanderbaan

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
16	2999:23	Dumbacher	believed	believes
16	2999:24	Dumbacher	in forming	informing
16	3001:5	Dumbacher	believed	believes
16	3001:10	Dumbacher	believed	believes
16	3002:18	Dumbacher	believed	believes
16	3003:11	Dumbacher	varying	union
16	3005:4	Dumbacher	believed	believes
16	3005:6	Dumbacher	believed	believes
16	3008:7	Dumbacher	United	unionized
16	3012:13	Dumbacher	at	that
16	3012:15	Dumbacher	believed	believes
17	3023:3	Judge Rosas	occlusion	exclusion
17	3029:7	Judge Rosas	Gissel Terraine	Gissel terrain
17	3033:24	Powell	Terra	Terre
17	3033:25	Powell	8A-1's	8(a)(1)'s
17	3040:22	Powell	Counsels'	Counsel's
17	3044:2	Powell	plan	plant
17	3047:17	Powell	prove	provide
17	3052:9	Roberts	211	2(11)
17	3060:17	Leslie	thread	threat
17	3060:17	Leslie	thread	threat
17	3060:19	Leslie	thread	threat
17	3067:24	Roberts	211	2(11)
17	3068:3	Roberts	211	2(11)
17	3073:4	Powell	appropriate	appropriately
17	3073:16	Powell	employee's	employees
17	3080:22	Roberts	211	2(11)
17	3081:10	Manzollilo	211	2(11)
17	3081:12	Powell	211	2(11)
17	3081:16	Powell	211	2(11)

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
18	3099:19	Manzolillo	Twommey	Toomey
18	3099:20	Manzolillo	Twommey	Toomey
18	3099:22	Judge Rosas	Twommey	Toomey
18	3134:3	Powell	not	note
18	3173:18	Roberts	web	wet
18	3173:19	Roberts	Axtel	Axtell
18	3173:23	Roberts	web	wet
18	3173:24	Roberts	Axtel	Axtell
18	3173:25	Roberts	web	wet
18	3175:7	Roberts	web	wet
18	3180:23	Powell	Margaret	Marco
18	3181:12	Powell	Margaret	Marco

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

NOVELIS CORPORATION		
and	**Cases:**	**03-CA-121293**
		03-CA-121579
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO		**03-CA-122766**
		03-CA-123346
		03-CA-123526
		03-CA-127024
		03-CA-126738
NOVELIS CORPORATION	**Case:**	**03-RC-120447**
and		
UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO		

NOVELIS CORPORATION'S SUPPLEMENTAL MOTION TO CORRECT THE RECORD

Respondent Novelis Corporation attaches as Exhibit B to this motion additional transcript errors noted by Novelis for which it also moves the Administrative Law Judge to correct. Exhibit B supplements Exhibit A from Novelis Corporation's Motion To Correct The Record (filed December 3, 2014). Wherefore, Respondent respectfully requests that the Administrative Law Judge correct the record by referring to the errata sheet attached as Exhibit B to this motion.

Respectfully submitted this 4th day of December, 2014.

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CERTIFICATE OF SERVICE

I certify that on this 4th day of December, 2014, I caused the foregoing to be electronically filed with the National Labor Relations Board at http://nlrb.gov and a copy of same to be served by e-mail on the following parties of record:

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EXHIBIT B

Novelis Corporation's Additional Proposed Changes to Hearing Transcript

VOL. #	PAGE/LINE	IDENTIFIED SPEAKER	CHANGE- Incorrect	CORRECT
10	1799:16	Lewis LaClair	Jim Lerner	Jim Martin
10	1799:21	Lewis LaClair	Andy Lucion	Andy Duschen
10	1800:4	Lewis LaClair	Timmy	Teddy
10	1800:5	Larkin	Timmy	Teddy
10	1854:13-14	John Bugow	Perry Snyder	Pete Sheftic
10	1884:19	John Whitcomb	Herb Toceta	Ernie Tresidder